

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

DWIGHT RODGERS,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	CIVIL ACTION NO:
	)	2:06-CV-1067-WKW-SRW
CRACKER BARREL OLD	)	
COUNTRY STORE, INC.,	)	
	)	
DEFENDANT.	)	

**DEFENDANT CRACKER BARREL OLD COUNTRY STORE, INC.'S**  
**EVIDENTIARY SUBMISSION IN SUPPORT OF**  
**ITS MOTION FOR SUMMARY JUDGMENT**

**COMES NOW** Defendant, Cracker Barrel Old Country Store, Inc. ("Cracker Barrel") and submits its evidentiary submission in support of its Motion for Summary Judgment filed contemporaneously herewith.

Exhibit A	Affidavit of Rich Alexander and Exhibits 1-8 to Affidavit
Exhibit B	Deposition of Plaintiff Dwight Rodgers and Exhibits 1-15 to Deposition
Exhibit C	RTM Records re: Plaintiff's Employment & Termination
Exhibit D	Excerpts of Plaintiff's Interrogatory Responses
Exhibit E	Bojangles' Work Incident Reports re: Plaintiff
Exhibit F	Ruby Tuesday Records re: Plaintiff
Exhibit G	Affidavit of Tommie Patterson and Exhibit 1 to Affidavit
Exhibit H	EEOC Statement of Penny Schmidt

s/ Jennifer M. Busby  
Jennifer M. Busby (BUS009)  
Ashley H. Hattaway (HAT007)  
Attorneys for Cracker Barrel Old Country  
Store, Inc.

**OF COUNSEL:**

BURR & FORMAN LLP  
3400 Wachovia Tower  
420 North 20th Street  
Birmingham, Alabama 35203  
Telephone: (205) 251-3000  
Facsimile: (205) 458-5100

**CERTIFICATE OF SERVICE**

I hereby certify that on August 2, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Byron R. Perkins  
The Cochran Law Firm  
505 North 20th Street, Suite 825  
Birmingham, Alabama 35203

Monica A. York, Esq.  
Breedlove & Lassiters, LLP  
250 E Ponce de Leon Avenue  
Suite 425  
Decatur, GA 30030

s/ Jennifer M. Busby  
OF COUNSEL

**DFT CRACKER BARREL'S  
EX. A  
TO EVIDENTIARY SUBMISSION**

**AFFIDAVIT OF RICH ALEXANDER**

STATE OF ALABAMA                     )  
  )  
COUNTY OF JEFFERSON                )

The undersigned, Rich Alexander, deposes and states as follows:

1.     My name is Rich Alexander. I am over the age of nineteen and I have personal knowledge of the facts set forth in this affidavit. I give this affidavit voluntarily and without coercion.

2.     I have worked for Cracker Barrel Old Country Store, Inc. ("Cracker Barrel") since 1990, and I have been a District Manager since 1995. I am currently District Manager for District #15, and I oversee eight Cracker Barrel restaurants.

3.     I am aware of and understand Cracker Barrel's Equal Employment Opportunity, Harassment, Discrimination, Retaliation and Open Door policies. True and correct copies of these policies are attached hereto as Exhibit 1. This document was made at or near the time of the occurrence of the matters set forth within, was kept in the course of regularly conducted activity and was made by regularly conducted activity as a regular practice. Cracker Barrel publishes these policies to all employees and enforces these policies.

4.     As a District Manager, I have been well trained in these policies. I was trained in the policies when I began work with Cracker Barrel, and I received



additional training in these policies when I became a District Manager. I attend annual manager meetings where I have refresher training in Cracker Barrel's employment policies. I have attended classes on these policies and in diversity. Cracker Barrel frequently distributes materials reminding us of its policies and emphasizing that it does not tolerate any harassment or discrimination. Cracker Barrel also maintains a Hotline that employees can use to make complaints to the Home Office.

5. I understand that Cracker Barrel does not tolerate any discrimination, harassment or retaliation and that employees can be disciplined for engaging in any such behavior. The training that I have received at Cracker Barrel has included the prohibitions of these policies. The training has also included information on how to investigate and resolve complaints of discrimination, harassment or retaliation.

6. I take complaints of discrimination, harassment and retaliation very seriously. If I become aware of employee complaints of discrimination, harassment and retaliation in my district, I investigate and resolve those complaints as appropriate in each circumstance.

7. According to records of the Company which I have reviewed, Dwight Rodgers was hired by Cracker Barrel in July, 2002 into its Management in Training Program based in part on his resume. I know this because I have had

experience in interviewing and hiring individuals into the management program at Cracker Barrel, and in doing so, I know that we rely on information submitted by employees on their resumes. I also know from my experience in hiring at Cracker Barrel that we would not have hired Mr. Rodgers into our management program if we had known that he had been fired by two other restaurant companies because of his conduct as a manager. We also would not hire anyone that we knew lied about their educational or employment history on documents or other information submitted to Cracker Barrel.

8. According to records of the Company which I have reviewed, Dwight Rodgers completed his management training and became an Associate Manager at Cracker Barrel in October, 2002.

9. According to records of the Company which I have reviewed, Dwight Rodgers became a Senior Associate Manager at Cracker Barrel in July, 2004. To be promoted to a SAM position, the employee must complete a Associate Manager Development Guide which must be approved by the General Manager and Districts Managers. Then the individual spends time training on the job for at least a sixty day period. Then the employee attends leadership training at the Home Office. Finally if the Restaurant District Manager and the Regional Vice President approve

of the employee's completion of these tasks, they promote him to the SAM position.

10. Attached hereto as Exhibit 2 are true and correct copies of plaintiff's Evaluations as an Associate Manager and Senior Associate Manager. These documents were made at or near the time of the occurrence of the matters set forth within, were kept in the course of regularly conducted activity and were made by regularly conducted activity as a regular practice. Evaluation 2 of 2004 is the last evaluation performed on plaintiff before he became a General Manager at Cracker Barrel.

11. I was Dwight Rodgers' immediate supervisor after he became the General Manager at Cracker Barrel. I selected Mr. Rodgers for the General Manager position in Gardendale, Alabama, with the approval of my supervisor, Ron Phillips, and I promoted him to GM on September 4, 2004. The usual process for selection of a General Manager is for individuals to apply for a vacancy and then be interviewed by a panel, usually consisting of the District Manager and Regional Vice President over the store and other district managers. The District Manager over the store selects the individual he wants to be the General Manager, with the approval of the Regional Vice President. This is the process we used to select Mr. Rodgers for the Gardendale store.

12. Ron Phillips suggested Mr. Rodgers to me as a candidate for the position, and I invited Mr. Rodgers to apply for the position. I chose Mr. Rodgers for the General Manager position over other Caucasian candidates. I knew at the time that he was African-American.

13. The other managers who worked at Gardendale when Mr. Rodgers began employment there were Tommie Patterson, Lisa Claburn, Carolyn Freeman and Carol Willis. Ms. Willis later transferred and was replaced by Brian Harbin. Overall, this was a very experienced team of managers. According to the records of the Company which I have reviewed, Tommie Patterson began work for Cracker Barrel in January, 2000, became an Associate Manager in March, 2000 and a Senior Associate Manager in January, 2003. Lisa Claburn began working in the Gardendale store when it opened in 1996 and became a Manager in 1999. Carolyn Freeman also began work for Cracker Barrel in 1996 and became a Manager in 2002. Carol Willis started with Cracker Barrel in 1992 and became a Manager in 1996. Brian Harbin became employed by Cracker Barrel in August, 2004 and became an Associate Manager in October, 2004.

14. Although Associate Managers are assigned certain duties and assist in the operations of the store, the General Manager is ultimately responsible for making sure that the store meets the standards set for it. These standards include

but are not limited to certain objective standards such as guest complaints, food costs, labor costs, net operating income, restaurant sales growth and retail sales. Under Mr. Rodgers' tenure, the store did not perform well in most of these categories.

15. Mr. Rodgers also did not demonstrate good leadership skills in the Gardendale store. After Mr. Rodgers became the General Manager at that store, the other managers reported to me some problems with his leadership. For example, they told me that he did not communicate to them a clear direction for the store, which caused them uncertainty in how to proceed at times. They complained that he did not communicate well with them. They complained that he spent too much time in the office. They complained that he did not follow through with plans and paperwork and did not hold employees accountable for their actions. They also complained that he did not provide training and role modeling for them and other associates. One of their primary complaints was that he was not at work enough and sometimes called off at the last minute. They complained that his absences sometimes caused them to have to work more.

16. I also personally observed Mr. Rodgers' poor leadership skills when I was in the store. For example, I observed Mr. Rodgers in the manager office during peak periods at the store when he should have been out in the restaurant. I

also observed that he did not spend much if any time walking the store to look for food quality and other issues. I also observed that he was not holding the other managers accountable for duties they were assigned.

17. Because of the employee complaints and my concerns about Mr. Rodgers' ability to lead, I had a meeting with the Associate Managers on March 21, 2005, to discuss their concerns. Following this meeting, I sent Ron Phillips an e-mail in which I outlined the results of that meeting. A true and correct copy of that e-mail is attached hereto as Exhibit 3. This document was made at or near the time of the occurrence of the matters set forth within, was kept in the course of regularly conducted activity and was made by regularly conducted activity as a regular practice. Following the March 21 meeting with the Associate Managers, I met with Mr. Rodgers and discussed his managers' concerns and encouraged him to take steps to improve his leadership of the unit.

18. This March 21 meeting was not the first time that I met with Mr. Rodgers about his performance. I counseled him about various aspects of his performance from the beginning of his employment in Gardendale. The Gardendale store is near my home so I was able to drop by there frequently, observe operations and talk with Mr. Rodgers about deficiencies I observed. This

coaching and counseling by me was continuous from the start of his employment as a GM until the termination of his employment.

19. As early as December, 2004, I communicated some of my concerns about Mr. Rodgers' performance as a General Manager to Ron Phillips, including but not limited to his attendance, some accountability concerns and his inability to build credibility with his management team. Although I was hopeful that Mr. Rodgers could turn his performance around, I had serious concerns that had to be resolved if he was going to succeed as a General Manager. Mr. Phillips and I met with Mr. Rodgers at that time and discussed our concerns with him. Attached hereto as Exhibit 4 is a true and correct copy of an e-mail I sent Mr. Phillips and he forwarded to Mike Adkins, Divisional Vice President. This document was made at or near the time of the occurrence of the matters set forth within, was kept in the course of regularly conducted activity and was made by regularly conducted activity as a regular practice. In his e-mail, Mr. Phillips noted my concerns in December and our meeting with Mr. Rodgers at that time.

20. Despite our coaching and counseling of Mr. Rodgers, his performance problems continued, and again on February 22, 2005, I brought some more of them to the attention of Mr. Phillips by e-mail. Exhibit 4 referenced above contains a copy of that e-mail. In that e-mail I noted Mr. Rodgers' failure to keep me

informed of schedule changes. I also noted some instances in which I felt that he was not honest. I later counseled Mr. Rodgers about these concerns. When I sent this e-mail, I did not know of the comment that Mr. Patterson made about funerals.

21. These are just some examples of my interactions with Mr. Rodgers about his performance. I had many communications with Mr. Rodgers and with Mr. Phillips about Mr. Rodgers' performance during his employment at Gardendale. Mr. Rodgers' usual response to such counseling was to be defensive and argumentative and to blame others, such as the Associate Managers.

22. I also evaluated Mr. Rodgers' performance for the time period of September, 2004 through January, 2005. Although the evaluation period normally began in August, I only judged him on the five months during which he was the General Manager and therefore had control over the operations and financial performance of the store. Mr. Rodgers received a "2" out of "5" on his Evaluation which was a very poor score. His poor score was a combination of the store's financial performance under his management and his poor leadership skills. The financial performance of the store could not be blamed on Mr. Rodgers' predecessor. Some financial categories, such as food costs, started over every month, and certainly all of the categories could be maintained or improved in the five months covered by the Evaluation. I reviewed this Evaluation with Mr.



Rodgers, suggested ways he could improve his performance and told him that he had my support.

23. Unfortunately, Mr. Rodgers' performance did not improve, and I continued to counsel him. On May 14, 2005, I met with Mr. Rodgers about the fact that he only worked 34 hours in the preceding week even though his store was negative in sales growth and missing food and labor goals. I also expressed concern that he changed his schedule four times and failed to notify me on most of those occasions. I e-mailed a detailed account of the meeting to Ron Phillips the next day. Attached hereto as Exhibit 5 is a true and correct copy of that e-mail. This document was made at or near the time of the occurrence of the matters set forth within, was kept in the course of regularly conducted activity and was made by regularly conducted activity as a regular practice.

24. In June, 2005, Cracker Barrel was opening a new store in Montgomery, Alabama, which also was in my district. Before the store opened, I fired the General Manager so the position became vacant. Mr. Rodgers requested a lateral transfer to that position. I discussed this request with Mr. Phillips, and we were reluctant to grant the transfer because of his performance issues. Ultimately, however, we decided to allow the transfer because we hoped that Mr. Rodgers' performance might improve if he had a new store and a new management team

with which to work. We met with Mr. Rodgers and told him that we were allowing the transfer but that he had to improve his performance. Mr. Rodgers' request to transfer and some of the concern that we had about allowing him to transfer is documented in Exhibit 5, which is referenced above.

25. Mr. Rodgers did not perform well in Montgomery either. From June through August, sales were below expectations and were continually decreasing. There was an unacceptable number of guest complaints, which in my experience contributed to the decreasing sales. Labor costs and food costs were excessive. I counseled Mr. Rodgers about these issues.

26. Again, Mr. Rodgers tried to blame his Associate Managers, but the performance of the store was his responsibility. Moreover, the Senior Associate Managers and Associate Managers had been trained and had experience at Cracker Barrel. For example, the Senior Associate Manager had been in management at Cracker Barrel for approximately five years. They were certainly experienced enough to provide the necessary assistance to Mr. Rodgers. Moreover, for the first two weeks of operations, there was a Store Opening Supervisor, a Retail Opening Supervisor and their team of people in the store to help Mr. Rodgers. They were experts in helping new stores open. Even after they left, Cracker Barrel provided other experienced individuals to help in the store as needed.

27. On June 17, 2005, I documented some of Mr. Rodgers' performance problems in a memo and discussed those problems with him. After I gave that memo to Mr. Rodgers, I discussed the concerns I had in detail with Mr. Phillips. Mr. Phillips told me that he approved of the counseling.

28. Even after June 17, plaintiff's performance did not improve. On August 6, 2005, I gave Mr. Rodgers a written warning about the unacceptable number of guest complaints in his unit, his lack of urgency in responding to those complaints, and the continually decreasing sales in the unit. In the warning, I outlined some steps he could take to address the problems.

29. On August 12, I was in the Montgomery store, and plaintiff and two other managers were on duty. While there, I found food items that were not labeled or had expired. The items should have been thrown away. The managers on duty should have done a walk through to make sure they had been discarded, but clearly they had not. This was a very serious matter as food quality and safety is of the utmost importance, and the managers, including Mr. Rodgers are trained in the importance of labeling and discarding product. When I approached Mr. Rodgers about this matter, he immediately blamed his Associate Managers and did not take personal responsibility for the food quality in his store. On that same day, I gave him a final written warning for this incident and many other operational

failings, all of which I discussed with him. I told him that he had to improve immediately or he could be terminated.

30. Even after all of the counseling, Mr. Rodgers continued to have performance problems. I outlined some of these problems on a Documentation of Performance which I attached to his termination form.

31. One of the problems included in that Documentation of Performance was Mr. Rodgers' failure to participate in conference calls or to otherwise give me personal notification of certain operational issues. For example, in August, he was supposed to personally call me and provide an explanation if the store did not meet the "R" goal for the day, which means the labor dollars spent compared to sales for the day. He did not do this. When I asked him about this failure, he said he thought his performance was based on "E", which relates to productivity of employees. I explained that "R" was the relative goal and that he must call me when he missed that goal. He still failed to do that.

32. On August 18, he had an Associate Manager leave me a voice mail about why labor costs were over the expectation when I expected a personal call. This was one example of Mr. Rodgers failing to address operational issues personally, and instead putting the obligation on his associates.

33. Likewise, on July 20, plaintiff failed to participate in a conference call in which I expected him to participate personally. Instead, he had an Associate Manager participate. When I asked him about not participating in the call, he acted like it was no big deal, indicating again that he did not understand the importance of taking personal responsibility for the store's success.

34. To my knowledge, Mr. Rodgers did not move on July 20, 2005. The U-Haul receipt that he submitted to the Company shows that he moved on July 22, 2005. Attached hereto as Exhibit 6 is a true and correct copy of that receipt. This document was made at or near the time of the occurrence of the matters set forth within, was kept in the course of regularly conducted activity and was made by regularly conducted activity as a regular practice.

35. I terminated Mr. Rodgers' employment on September 3, 2005 in the presence of Monique Frank, Retail District Manager for the store. I read the above-referenced Documentation of Performance to Mr. Rodgers and asked him if he had any questions. He said that he did not. I then told him that he was being terminated. He made no comments, but handed me his keys. I asked him if he had any personal items he needed from the store, and he said no. I then asked him for his employee discount card and he said it was in his car and that he would bring it in. Ms. Frank and I then shook hands with him, and he walked out. Attached

hereto as Exhibit 7 is a true and correct copy of a statement written by Monique Frank on the day of the termination, which she gave to me at that time. This document was made at or near the time of the occurrence of the matters set forth within, was kept in the course of regularly conducted activity and was made by regularly conducted activity as a regular practice.

36. Cracker Barrel's policy is that all employees must use clear plastic bags to carry their belongings. Any bags that are not clear must be checked before they leave the building. For this reason, General Managers did not carry briefcases. I do not recall Mr. Rodgers using a briefcase. I know that Mr. Rodgers did not take a briefcase from the store on the day that I terminated him.

37. I made the decision to terminate Mr. Rodgers, and Mr. Phillips approved it. I was very disappointed that I had to terminate Mr. Rodgers. His failure to succeed in the General Manager position reflected poorly on me because I promoted him to the position and supervised him. Retention of managers is important to my success as a District Manager.

38. As is Cracker Barrel's general practice, I temporarily filled the General Manager position after Mr. Rodgers' termination until we could complete the formal process for filling the position. I chose another African-American General Manager named Jerome Kelly to fill that temporary position. I hoped that

he would apply to become the permanent General Manager. However, Mr. Kelly decided not to apply for the permanent position.

39. In March, 2005, I was informed about a comment that Tommie Patterson made to Penny Schmidt after Mr. Rodgers had called to let Mr. Patterson know that his aunt had died. The comment was "don't they have their funerals on the weekends? I investigated this complaint.

40. I interviewed Ms. Schmidt and she confirmed the comment and that the comment was made in response to her inquiry about scheduling.

41. I then spoke to Mr. Patterson about the comment. He admitted it but said that he did not mean the comment to be derogatory. He said he thought it was a true statement and that he thought it was responsive to Ms. Schmidt's question about when Mr. Rodgers would return to work. Mr. Patterson seemed sincere and sorry if he had offended Ms. Schmidt. I verbally counseled Mr. Patterson about the comment and told him that it was inappropriate and that he should not make any other such comments in the future. I also told him to apologize to Ms. Schmidt, and I told Ms. Schmidt that Mr. Patterson would be apologizing to her. Mr. Patterson did indeed apologize. I was not told of any other alleged discriminatory comments by Mr. Patterson.

42. I did not interview Mr. Rodgers in detail about the comment. I did not see any need to do so for several reasons. First, it was my understanding that he was not present when the comment was made. Second, Mr. Patterson admitted to making the comment. Third, I interviewed the witness, Ms. Schmidt. My investigation into the matter was sufficient to allow me to resolve the matter, and I verbally counseled Mr. Patterson about the comment, which was a confidential personnel matter. I did not talk about the confidential details of this matter any further, but I let Mr. Rodgers know that I handled it.

43. I do not recall who reported Mr. Patterson's comment to Home Office. If Mr. Rodgers made that report, as a General Manager, I would expect him to report such employee issues to the Home Office and to me if he believed they involved discrimination. My assessment of Mr. Rodgers' performance had nothing to do with the Patterson comment.

44. I have reviewed the records of Hotline calls made by Dwight Rodgers during his employment which are kept by Cracker Barrel in the regular course of business. There are records of calls by him to the Hotline on only two topics. One, he called about the comment by Patterson. Two, he called about his termination. Attached hereto as Exhibit 8 are true and correct copies of the records of those Hotline calls. These documents were made at or near the time of the

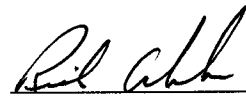


occurrence of the matters set forth within, were kept in the course of regularly conducted activity and were made by regularly conducted activity as a regular practice.

45. None of my actions towards Mr. Rodgers were based on his race or any retaliatory animus. I have supervised many other African-Americans who have been very successful with Cracker Barrel.

46. The foregoing is true and complete to the best of my knowledge and sworn to under penalty of perjury.

DATED: 7/31/2007

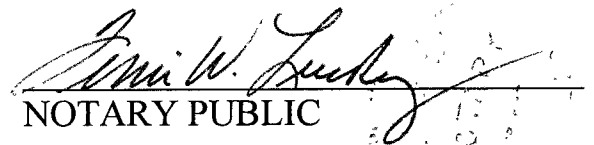
  
Rich Alexander

#### VERIFICATION

STATE OF ALABAMA                    )  
  )  
COUNTY OF JEFFERSON            )

Before me, Rich Alexander a notary public in and for said county in said State, personally appeared, Rich Alexander, who is known to me and who being first duly sworn, deposes and says that he has personal knowledge of the facts set forth in the foregoing affidavit and that all such matters are true and correct to the best of his knowledge.

Subscribed and sworn before me this 31 day of July, 2007.

  
NOTARY PUBLIC

My Commission Expires:

*2/17/08*

**EXHIBIT 1**  
**TO ALEXANDER AFFIDAVIT**

# Employment Policies

## Equal Opportunity Statement

Employment opportunities at Cracker Barrel Old Country Store are open to all qualified applicants solely on the basis of their job-related experience, knowledge, skills, and abilities. Qualified applicants are considered for all open positions for which they apply and for advancement without regard to race, color, religion, sex, sexual orientation, national origin, age, marital status, or the presence of a medical condition or disability. Cracker Barrel complies with all applicable federal, state and local laws with regard to equal employment opportunity. Advancement is based entirely

on an individual's demonstrated performance, job-related ability, skills, and knowledge and the resulting potential for promotion to the job openings applied for.

Cracker Barrel will not tolerate any form of discrimination, harassment or retaliation affecting its employees or applicants due to race, color, religion, sex, sexual orientation, national origin, age, marital status, medical condition, or disability.

Employees who believe they have been subjected to unlawful discrimination, harassment, or retaliation must immediately advise their Supervisor,

Manager, or District Manager. In addition, you can always call the Employee Relations Department toll-free at 1-800-333-9566 to report issues or concerns about your employment at Cracker Barrel. You are also strongly encouraged to report inappropriate conduct that you observe, whether or not it affects you directly.

The company's anti-discrimination and anti-harassment policies are intended to result in effective responses to problems. They require you to provide the company an immediate opportunity to investigate and resolve your workplace

concerns. You must notify your Supervisor, Store Managers, District Manager, or the Employee Relations Department at the above number regarding issues of harassment, discrimination or retaliation. Employees are encouraged to use the chain of command, but you are not required to notify or speak to store management prior to contacting the Employee Relations Department.

## Employment at Will

This Employee Handbook is to give you information about Cracker Barrel's general employment policies, procedures, and benefits. Please read this handbook carefully and be sure you understand it all.

This handbook is not intended to be contractual in nature or to form the basis of an expressed or implied

contract and should not be relied upon as a contract or an agreement promising employment to any person at any time. The policies, procedures, and benefits discussed in this handbook are specified in detail in other documents and they may be unilaterally amended, modified, or deleted by Cracker Barrel at any time,

with or without prior notice. This handbook and the policies, procedures, and benefits contained in it do not in any way constitute, and should not in any way be construed as a contract of employment, a promise of employment, a promise of continuing employment or a guarantee of any term or condition of employment.

It is the express policy and intent of Cracker Barrel Old Country Store that the employment relationship is an employment-at-will relationship, for no definite duration and is terminable at will by either party with or without cause, with or without notice, for any reason or for no reason.

## Rules of Conduct

Cracker Barrel Old Country Store expects the highest standards of behavior from you. All employees must comply with all Cracker Barrel work rules at all times. If you have a question regarding any of these policies, please ask your manager for an explanation because you can

be disciplined immediately or terminated if you do not follow these rules.

Be sure you read the "Employment at Will" section of this handbook.

Be aware that these Rules of Conduct list many of the most important rules but they are not intended to cover all

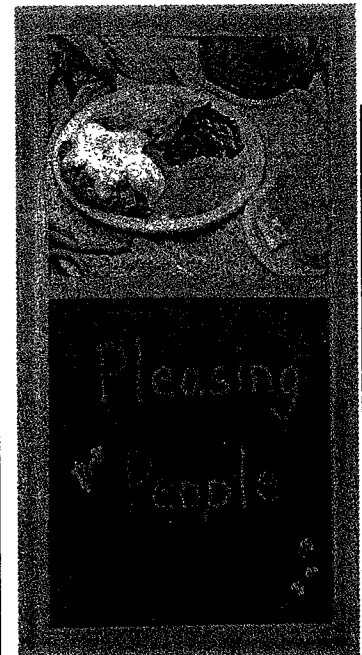
conduct or work performance issues which may be grounds for disciplinary action or immediate dismissal, and Cracker Barrel can unilaterally change or add to them at any time, without prior notice.

These Rules of Conduct are based on the company's

Statement of Company Standards of Conduct and they sound very formal because Cracker Barrel takes this matter very seriously. How each one of us behaves reflects on all of us!

## You MUST...

1. be courteous, friendly, and helpful to our guests and other employees at all times.
2. pay full attention to your work.
3. follow specific instructions of management.
4. not use profane, indecent, or abusive language or act in a rude or boisterous manner.
5. perform your job in a safe manner.
6. have proper cause, give prior notification to management, and receive authorization to be absent from work.
7. not engage in conduct which may constitute any form of discrimination or harassment.
8. not make threats to other employees or guests. Cracker Barrel Old Country Store has a zero tolerance for threats or acts of violence.
9. exit the building after you have completed your shift and not remain in the building for reasons other than company related business.
10. conduct yourself at all times in a manner which is consistent with all applicable laws. Conviction of any felony crime or serious misdemeanor, regardless of the place or circumstances, is cause for immediate termination unless otherwise prohibited by law. Employees must inform their supervisor if they are/have been convicted of a felony. Employees who are incarcerated (regardless of the reason) and miss a scheduled shift will be terminated for an unexcused absence.
11. not possess, store, or use alcoholic beverages or illegal drugs on company property or while in the performance of company business. Abuse of prescription drugs and reporting to work under the influence of alcohol or illegal drugs are also prohibited.
12. comply with the Drug-Free Workplace Policy. Post-accident drug testing will be required and a positive drug test or a failure to cooperate in drug testing (where permitted) could result in denial of worker's compensation benefits and termination from employment, as permitted by law.
13. not possess, store, or use weapons on company property or while in the performance of company business, regardless of whether such possession is lawful.
14. not cause or participate in an assault, fight, argument, or other disturbance.
15. not engage in conduct that is unbecoming to Cracker Barrel's image.
16. wear clean, proper clothing or other prescribed attire while working.
17. follow the Employee Meal Policy.
18. not remove, take away or use company property without proper authority from a company representative.
19. protect the confidentiality of all company information and not disclose any company information without written, prior authorization.
20. immediately report all racial discrimination, all sexual harassment, all other offensive actions, all accidents, suspected dishonesty, or other unusual circumstances to your store management.
21. not make unauthorized long distance telephone calls on a company telephone or using a company phone card.
22. not allow friends or relatives in "employee only" areas.
23. follow package checking regulations and use designated employee entrances and exits.
24. not engage in solicitation or distribution of written materials or other items during working time in work areas.
25. not post written materials or other items on company bulletin boards or company property without prior approval from management.
26. not work overtime without prior authorization of management.
27. use tobacco products only in designated areas.
28. be honest in handling money, merchandise, or other property which belongs to the company, other employees, or guests.
29. maintain truth and accuracy in all company records and documents including your employment application, time records and tip reporting.
30. not offer or receive money or other things of value to influence the decisions made by any employee of the company.
31. not make false or incomplete statements or mis-statements to any auditors or investigators employed or retained by the company or to any company official regarding company business.
32. comply with Cracker Barrel's Asset Protection Policy.



## Open Door Policy



Employee Relations Department  
Cracker Barrel Old Country Store  
P.O. Box 787, Hartmann Drive  
Lebanon, TN 37088 - 0787

Toll-free Telephone: 1-800-333-9566

As an employee of Cracker Barrel Old Country Store you belong to an important group of people. Cracker Barrel pleases its employees by supporting them as they strive for success and by listening to their concerns and ideas. Cracker Barrel relies on store managers to do this as part of their jobs.

Your manager is responsible for your training. He or she wants you to do well, and is interested in your welfare, your work, your working conditions, and your satisfaction as an employee of Cracker Barrel. We encourage you to go to your manager with any questions or suggestions, or to review any problems or decisions affecting your job.

Your manager is your first link to the rest of the company.

If you then believe the situation has not been resolved or if you just can't talk about it with your manager, write or call your District Manager. If you believe your problem or concern has still not been resolved, write or call the Employee Relations department toll-free at 1-800-333-9566. It is required that you provide the company an opportunity to investigate and resolve your workplace concerns. Therefore, you must notify your store managers, district manager, or the Employee Relations department at the above number regarding issues of harassment or discrimination. Employees are encouraged to use the chain of command but are not required to speak to store management prior to contacting the home

office. You will need to provide your name and store number to ensure a proper investigation is conducted.

Cracker Barrel always tries to have a good working atmosphere for all employees. Of course, there will be occasions when problems need to be discussed so that solutions can be reached. It is everyone's responsibility to help maintain good working relationships and to continue to communicate until the problem is finally resolved.

Please know that you are not required to complain to your immediate supervisor first and you won't be retaliated against by using this policy in good faith.

## Harassment and Discrimination

Cracker Barrel Old Country Store does not tolerate unlawful harassment or discrimination based on an individual's protected status. We value and respect all of our employees and all employees are responsible for ensuring that the store is free from harassment or discrimination. Inappropriate or offensive behavior, actions, words, jokes or comments based on an individual's race, color, religion, sex, sexual orientation, national origin, age, marital status, medical condition, or disability will not be tolerated and may constitute harassment or discrimination. Be aware that Cracker Barrel will take affirmative steps to end any such conduct, up to and including termination.

You must avoid any action or conduct which could be viewed as unlawful harassment or discrimination, including but not limited to:

- Sexual touching, advances or propositions
- Verbal abuse of a sexual or racial nature or regarding a person's disability or national origin
- Graphic or sexual comments about an individual's dress or body
- Sexually or racially degrading words to describe an individual or group
- Display in the workplace of sexually suggestive or racially offensive objects or pictures
- Sexually or racially offensive jokes
- Any derogatory or negative language which could cause hostility in the workplace
- Inappropriate touching such as rubbing shoulders or other body parts
- Comments about a person's sexual practices or preferences

If you have a complaint of harassment or discrimination at work by anyone, including managers, co-workers, guests or vendors, you must report the complaint. It is the obligation of all employees to report any and all known or perceived harassment or discrimination to their manager or to the Employee Relations department toll-free at 1-800-333-9566. It is required that you provide the company an opportunity to investigate and resolve your workplace concerns. Therefore, you must notify your store managers, district manager, or the Employee Relations department at the above number regarding issues of harassment or discrimination. Employees are encouraged to use the chain of command but are not required to speak to store management prior to contacting the home office. If you voice a workplace concern, you must ensure your

manager completes an Employee Relations Open Door Report and submits it to the Employee Relations department at the home office. All complaints will be investigated in a timely manner, and as far as a complete investigation allows, kept confidential. Confirmed cases of harassment or discrimination will be regarded as gross misconduct and appropriate disciplinary action, which may include termination, will be taken. Employees will not be retaliated against by using this policy in good faith.

If you have questions or concerns that need to be addressed, please contact the Employee Relations department at the above number.

**EXHIBIT 2**  
**TO ALEXANDER AFFIDAVIT**



Evaluation View

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Associate Performance Evaluation

Employee Name: RODGERS DWIGHT N  
Employee ID: 364639  
Employee Position: GM0237  
Evaluator: SPEZIALE, THOMAS K  
Evaluator ID: 846425  
Evaluator Position: GM0505  
Evaluation: Eval 2 of 2004

Review dates

Evaluation End Dates for Fiscal: 2004

Eval 1 - 01/30/2004

Eval 2 - 07/30/2004

1) All employees who are evaluated will receive a signed paper copy of their own evaluation.

2) Evaluators will send evaluations to the home office HRIS department.

Rodgers v. Cracker Barrel  
Def. Initial Disc. 0123



Evaluation View

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**Objective 1: Achieve and maintain fully staffed stores with high quality management and hourly employees. Process Date 10-15-2004 10:0:18**

Eval	Rating	Category Scales Results from Qtrly PM	Focus Area
Eval_1>	5: Role Model: (0.2% or less)	1) Meet overtime % related to total labor cost	N/A
Eval_2>	4: Exceeds Standards: (0.21% to 0.3%)	5: Role Model: (0.2% or less) 4: Exceeds Standards: (0.21% to 0.3%) 3: Meets Standards: (0.31% to 0.4%) 2: Needs Improvement: (0.41% to 0.6%) 1: Unacceptable: (0.61% or greater)	
Eval_1>	5: Role Model: (98. or less)	2) Achieve hourly employee turnover goal (Goal = 115% annualized)	N/A
Eval_2>	1: Unacceptable: (146 or greater)	5: Role Model: (98. or less) 4: Exceeds Standards: (99 to 109.) 3: Meets Standards: (110 to 120.) 2: Needs Improvement: (121 to 145.) 1: Unacceptable: (146 or greater)	
Eval_1>	3: Meets Standards	3) Staffing and Retention	N/A
Eval_2>	3: Meets Standards		
	3.1 Develops and implements appropriate staffing and succession plans.		N/A
	3.2 Hires appropriately qualified candidates through effective interviewing and selection processes.		N/A
	3.3 Follows procedures outlined in the Staffing and Retention guide. Follows Best Practices guidelines for staffing and retention.		N/A
	3.4 Creates a work atmosphere where employees feel appreciated and motivated to perform and remain with Cracker Barrel.		N/A
	3.5 Confronts and resolves employee conflicts and morale issues.		N/A
	3.6 Supports and promotes quality of life initiatives.		N/A
	3.7 Evaluations are performed on a timely basis per the review		N/A

Evaluation View

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	cycle.	
	3.8 Interviews all applicants and has a good application system in place.	N/A
	3.9 Uses designated skill trainers for all positions and meets regularly to improve training.	N/A
Eval_1>	3: Meets Standards	4) Leading, Developing, and Communicating with Others
Eval_2>	3: Meets Standards	
	4.1 Communicates Cracker Barrel mission, vision, values, and goals to employees. Motivates and gains commitment from others. Schedules and holds weekly operational management meetings.	Strength
	4.2 Holds managers and staff accountable to Cracker Barrel Standards.	N/A
	4.3 Trains managers and employees effectively, using a hands-on approach when necessary.	N/A
	4.4 Provides specific, constructive and well-balanced feedback to retail counterpart, subordinates, peers, and supervisors on an ongoing basis.	Strength
	4.5 Effectively manages PAR program to develop employees.	N/A
	4.6 Listens actively; promotes and practices open door policy and manager is approachable.	N/A
	4.7 Communicates clearly, candidly, and honestly; avoids ambiguity and mixed messages.	N/A
	4.8 Effectively uses situational leadership skills to communicate with others.	Strength
	4.9 Participates in MIT and Associate Manager development as outlined in the Associate Manager Development Guide.	N/A
Eval_1>	3: Meets Standards	5) Administering Policies and Procedures
Eval_2>	3: Meets Standards	
	5.1 Executes Cracker Barrel's orientation and skills training programs for new employees.	Strength



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IMAGED		5.2 Documents and manages discipline and/or performance problems in accordance with Cracker Barrel's policies and procedures.	Strength
		5.3 Demonstrates a working knowledge of fair employment policies and guidelines (EEO guidelines, hiring minors, OSHA, etc.).	N/A
		5.4 Supports and executes responsibilities associated with the performance management process.	N/A
		5.5 Leads and supports all Best Practices initiatives.	N/A
Eval_1 >	Objective 1 Comment	3-1 Has submitted staffing plans and staffing needs in a timely manner. 3-2 Some poor selections in staffing. Need to better qualify applicants. 3-4 Well respected by employees. 3-5 Performs documentation in a fair and consistent manner. 3-5 Is approachable and resolves issues. 4-2 Instructs managers on proper procedures. 4-5 Clear concise evals along with hospitality appraisals. 5-1 Participates in orientations and PAR 0. 5-5 Quotes from BP manuals to guide daily decisions.	
Eval_2 >	Objective 1 Comment	Dwight has very good administrative skills in staffing and retention. He fully understands the process to staff a store. He can clearly articulate what development is needed for an individual. He uses the appropriate tools	
Objective 1: Point Subtotal			
Eval_1	Performance Measurements:	19.00	
	Performance Behaviors:	30.00	
Eval_2	Performance Measurements:	6.80	
	Performance Behaviors:	30.00	

Evaluation View

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Objective 2: Improve guest perceptions. Process Date 10-15-2004 10:02:21

Eval	Rating	Category Scales Results from Qtrly PM	Focus Area
Eval_1>	1: Unacceptable: (8 or more guest complaints)	6) Number of guest complaints 5: Role Model: (0 to 1. guest complaints) 4: Exceeds Standards: (2 to 3. guest complaints)	N/A
Eval_2>	1: Unacceptable: (8 or more guest complaints)	3: Meets Standards: (4 to 5. guest complaints) 2: Needs Improvement: (6 to 7. guest complaints) 1: Unacceptable: (8 or more guest complaints)	
Eval_1>	2: Needs Improvement: (75 to 84.)	7) Store Visit Report (average of two scores) 1: Unacceptable: (74. or below) 2: Needs Improvement: (75 to 84.) 3: Meets Standards: (85 to 88.) 4: Exceeds Standards: (89 to 93.) 5: Role Model: (94 or above)	N/A
Eval_2>	1: Unacceptable: (74. or below)		
Eval_1>	4: Exceeds Standards	8) Building and Maintaining Guest Relations	
Eval_2>	3: Meets Standards		
	8.1 Educates and empowers employees to please guests.		Strength
	8.2 Interacts frequently with guests in dining room (e.g. table visits) and retail store in a friendly, courteous manner.		Strength
	8.3 Follows through on commitments made to internal and external guests (e.g. follow through with complaints).		N/A
	8.4 Resolves guest problems or needs using S.T.A.R.S. Sets an example for employees.		N/A
	8.5 Provides service to guests that exceeds their needs and expectations.		N/A
	8.6 Staff is friendly, smiles, and demonstrates pleasing people practices.		N/A



Evaluation View

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Eval_1>	4: Exceeds Standards	9) Planning and Supervising Operations
Eval_2>	4: Exceeds Standards	
	9.1 Does accurate sales and labor forecasts. Anticipates and responds to volume fluctuations / bottlenecks and takes appropriate action.	N/A
	9.2 Manages multiple tasks and responsibilities simultaneously. Organized and uses day planner effectively. Meets all company and district deadlines.	Strength
	9.3 Considers employee training, breaks, and special requests when preparing schedules.	N/A
	9.4 Uses organizational skills. Prioritizes, delegates, and follows-up to maintain a smooth operation.	Strength
	9.5 Plans shifts using appropriate tools (e.g. PEP Talk, shift cards, production charts, Ally Rally, Red Book) to ensure store readiness.	N/A
	9.6 Determines Behaviors that need improvement; develops and implements goals and plans which successfully address these Behaviors.	Strength
Eval_1>	3: Meets Standards	10) Safety, Security, and Sanitation
Eval_2>	3: Meets Standards	
	10.1 Follows all HACCP guidelines.	Strength
	10.2 Meets all Cracker Barrel asset protection policy, cash management, safety, security, and sanitation standards.	Strength
	10.3 Maintains property, building, and equipment function at all times.	N/A
	10.4 Performs regular walk-thrus and holds all employees accountable for safety, security, and sanitation.	N/A
	10.5 Performs all required safety and sanitation inspections and makes adjustments as necessary.	N/A
	10.6 Ensures regular inspection of restrooms.	N/A
	10.7 Monitors dating and rotating shelf-life on boxes and food packages.	N/A

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	10.8 Makes regular supervised trash runs throughout shift.	N/A
	10.9 Educates and trains hourly staff and other managers on proper safety and security procedures.	N/A
	10.10 Promotes the "clean as you go" policy.	N/A
Eval_1>	Objective 2 Comment	8-1 The guest comes first! 8-2 Very good guest service skills overall. Very good retail awareness. 9-2 & 9-4 Highly organized to complete a large task list. 10-1 HACCP needs improvement. 10-4 Very good awareness to all safety and security process. Aware of Loss Prevention issues.
Eval_2>	Objective 2 Comment	Understands guest service needs and trains to that level. Excellent rapport with guests. Motivates staff to please the guest.
Objective 2: Point Subtotal		
Eval_1	Performance Measurements:	5.00
	Performance Behaviors:	34.40
Eval_2	Performance Measurements:	3.40
	Performance Behaviors:	30.00

Evaluation View

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**Objective 3: Improve store margins.** Process Date 10-15-2004 10:0:24

Eval	Rating	Category Scales Results from Qtrly PM	Focus Area
Eval_1>	1: Unacceptable: (greater than or equal to +0.2)	11) Achieve restaurant labor goal	N/A
Eval_2>	1: Unacceptable: (greater than or equal to +0.2)	5: Role Model: (less than or equal to -0.3) 4: Exceeds Standards: (-0.29 to -0.1) 3: Meets Standards: (-0.09 to 0.00) 2: Needs Improvement: (+0.01 to +0.19) 1: Unacceptable: (greater than or equal to +0.2)	
Eval_1>	4: Exceeds Standards: (-0.29 to -0.1)	12) Achieve food cost goal	N/A
Eval_2>	2: Needs Improvement: (+0.1 to +0.39)	5: Role Model: (less than or equal to -0.3) 4: Exceeds Standards: (-0.29 to -0.1) 3: Meets Standards: (-0.09 to +0.09) 2: Needs Improvement: (+0.1 to +0.39) 1: Unacceptable: (greater than or equal to +0.4)	
Eval_1>	1: Unacceptable: (+3.07% or greater)	13) Reduce retail inventory shrinkage to hit targeted goal (Goal = 2.3%)	N/A
Eval_2>	5: Role Model: (+1.54% or less)	5: Role Model: (+1.54% or less) 4: Exceeds Standards: (+1.55% to +2.04%) 3: Meets Standards: (+2.05% to +2.55%) 2: Needs Improvement: (+2.56% to +3.06%) 1: Unacceptable: (+3.07% or greater)	
Eval_1>	3: Meets Standards	14) Maintaining Sales and Quality of Operation	
Eval_2>	3: Meets Standards		
		14.1 Manages production, labor, and other costs using Cracker Barrel tools to achieve planned targets.	N/A
		14.2 Follows company mandatory food cost requirements.	N/A
		14.3 Increases sales and profitability through shift execution and appropriate sales-building strategies (using a seating index and appropriate staffing).	N/A



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	14.4 Maximizes productivity of self and others.	N/A
	14.5 Takes initiative to solve operational problems that arise.	N/A
	14.6 Labor - schedules properly for the volume to hit the targeted goals.	N/A
	14.7 Demonstrates an understanding of the impact of all decisions on Cracker Barrel profits.	N/A
	14.8 Uses data to make appropriate decisions to maximize sales.	N/A
	14.9 Adheres to Cracker Barrel product and guest service standards.	N/A
	14.10 Adheres to Cracker Barrel food quality and recipe standards.	N/A
	14.11 Trains and maintains proper procedures on guest check, exception reporting, service comps, manager unknowns, voids, and meal policies.	N/A
	14.12 Has proper (minimum standards) levels of small wares in service to assure a smooth operation.	N/A
	14.13 Partners with management team to reduce shrinkage.	N/A
	14.14 Reduces shrinkage through the use of the "Effective Shrinkage Management" tool.	N/A
	14.15 Ensures compliance to Retail Audit Procedures.	N/A
	14.16 Follows Asset Protection Policy.	N/A
Eval_1>	Objective 3 Comment	14-2 Has performed Targeted food review with appropriate action plans. 14-3 Leads employees to do their best, motivates well. 14-6 Some issues with scheduling, schedule holes. 14-11 Excellent with administrative responsibilities. 14-14 Audits all retail procedures.
Eval_2>	Objective 3 Comment	Quality driven individual. Has worked to overcome operational obstacles.
<b>Objective 3: Point Subtotal</b>		
Eval_1	Performance Measurements:	8.60
	Performance Behaviors:	14.40
Eval_2	Performance Measurements:	7.80
	Performance	14.40



Evaluation View

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Behaviors:

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Evaluation View

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**Objective 4: Exceed the Financial Plan** Process Date 10-15-2004 10:0:26

Eval	Rating	Category Scales Results from Qtrly PM	Focus Area
Eval_1>	5: Role Model: NOI v/s LY: (+20.01% or greater)	15) Net Operating Income (NOI) v/s Last Year NOI 1: Unacceptable: NOI v/s LY: (0%) 2: Needs Improvement: NOI v/s LY: (+0.01% to +7.5%)	N/A
Eval_2>	2: Needs Improvement: NOI v/s LY: (+0.01% to +7.5%)	3: Meets Standards: NOI v/s LY: (+7.51% to +15.09%) 4: Exceeds Standards: NOI v/s LY: (+15.1% to +20%) 5: Role Model: NOI v/s LY: (+20.01% or greater)	
Eval_1>	5: Role Model Rsales: (+6.1% or greater)	16) Real Net Restaurant Sales Growth 1: Unacceptable Rsales: (-3.6% or below) 2: Needs Improvement Rsales: (-3.59% to +3.39%)	N/A
Eval_2>	1: Unacceptable Rsales: (-3.6% or below)	3: Meets Standards Rsales: (+3.4% to +5.49%) 4: Exceeds Standards Rsales: (+5.5% to +6.09%) 5: Role Model Rsales: (+6.1% or greater)	
Eval_1>	3: Meets Standards: (-0.09% to +3.9%)	17) Achieve Retail Sales v/s Last Year 1: Unacceptable: (-3.6% or below) 2: Needs Improvement: (-3.59% to -0.1%)	N/A
Eval_2>	1: Unacceptable: (-3.6% or below)	3: Meets Standards: (-0.09% to +3.9%) 4: Exceeds Standards: (+3.91% to +5.99%) 5: Role Model: (+6% or greater)	
Eval_1>	Objective 4 Comment		
Eval_2>	Objective 4 Comment		
<b>Objective 4: Point Subtotal</b>			

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Eval_1	Performance Measurements:	23.80
	Performance Behaviors:	Subtotal N/A
Eval_2	Performance Measurements:	7.20
	Performance Behaviors:	Subtotal N/A

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IMAGED

Evaluation View

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**2004: Performance Summary**

Process Date 10-15-2004 10:0:28

Process Date 10-15-2004 10:0:28			
Objective No	Performance Areas	Eval 1	Eval 2
Objective 1	Performance Measurements:	19	6.8
	Performance Behaviors:	30	30
Objective 2	Performance Measurements:	5	3.4
	Performance Behaviors:	34.4	30
Objective 3	Performance Measurements:	8.6	7.8
	Performance Behaviors:	14.4	14.4
Objective 4	Performance Measurements:	23.8	7.2
	Performance Behaviors:	---	---
Current Evaluation Performance Measurements Score:		56.4	25.2
Current Evaluation Performance Behaviors Score:		78.8	74.4
Current Evaluation Overall Performance Rating:		3	3
	Overall Annual Performance Measurements Score:	40.8	

Evaluation View

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<b>Overall Annual Performance Behaviors Score:</b>		<b>76.6</b>
<b>2004 Overall Annual Rating:</b>		<b>3</b>
<b>2004 Rating Scale:</b>		<b>1 = 19.0000 - 29.4999</b> <b>2 = 29.5000 - 49.4999</b> <b>3 = 49.5000 - 69.4999</b> <b>4 = 69.5000 - 89.4999</b> <b>5 = 89.5000 - 100.0000</b>

IMAGED

IMAGED



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## Individual Development Program

Process Date 10-15-2004 10:0:28

Developmental Plan	Resources needed	Method to Measure	Follow-up Date
<b>Eval 1</b>			
Improven ability to develop Associate Manager in Supply Management, Labor Management and Food Management	AMDG, BP manuals and Read "Developing Leaders Around You"	Successful completion of the AMDG with positive results	7/30/04
<b>Eval 2</b>			
Understanding the Associate manager development process	1 on 1 with associate, read--In search of excellance	store indicators, management promotion	monthly

	Current		
	Recommendations	(Check)	Comments
Career Development:	Remain in current position for continued development	-X-	Learn and understand the General Manager position
	Developmental Projects	--	
	Promote	--	
	Willing to relocate	--	
	Special interests	--	

Evaluation View

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**Eval - 2004 Performance Comments and Signatures**

**Supervisor's Comments:**

**Strengths:** Excellent communicator and motivator. Should do well as GM.

**Improvement(s) from last evaluation:** I have not worked a great deal with Dwight over the past 6 months. I have however had several discussions and meetings with Dwight. He has grown. I have ascertained this by the content and questions fielded.

**Developmental Needs:**

**Employee's Comments:**

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Evaluation View

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Employee's  
Signature: \_\_\_\_\_

Supervisor's  
Signature: \_\_\_\_\_

Second Level Review  
Signature: \_\_\_\_\_

**Definition for Second Level Review and Signature**

1. Associate Manager and Senior Associate Manager evaluations performed by General Manager, the Second Level Review is the District Manager.

~~~OR~~~

2. General Manager and Retail Manager evaluations performed by District Manager, the Second Level Review is the Regional Vice President.

"I accept and understand Cracker Barrel's Equal Employment Opportunity policy, Anti-harassment policy, and Open Door policy; and that employees may utilize the company's toll free number (1-888-648-DOOR) to report complaints or violations of these policies. I understand that the company may be held responsible for acts of harassment that I commit, condone, tolerate, or fail to investigate. I further understand that if I violate any aspect of these policies that I will be subject to immediate discipline, up to and including termination, and that I can be sued and may be held personally liable for my acts or omissions. Therefore, I acknowledge and confirm that I am not aware of any observed, alleged, experienced, or reported harassment, including discrimination or sexual harassment. I commit that I will report any such knowledge or awareness of possible violations of these policies to my immediate supervisor or the Employee Relations Department. "

Employee signature: \_\_\_\_\_

Process Date 10-15-2004 10:0:29

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Def. Initial Disc. 0139



10/15/2004 11:13

7062088586

CRACKER BARREL

Evaluation V.cw

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Employee's  
Signature:

Supervisor's  
Signature:

Second Level Review  
Signature:

**Definition for Second Level Review and Signature**

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-OR-

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Employee signature:

Process Date 10-15-2004 10:0:29



Ex. 101

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### Associate Performance Evaluation

Employee Name: RODGERS DWIGHT N  
Employee ID: 364639  
Employee Position: AM0505  
Evaluator: SPEZIALE, THOMAS K  
Evaluator ID: 846425  
Evaluator Position: GM0505  
Evaluation: Eval 1 of 2004

Review dates

Evaluation End Dates for Fiscal: 2004

Eval 1 - 01/30/2004

1. All employees who are evaluated will receive a signed paper copy of their own evaluation.

2. Evaluators will send evaluations to the home office HRIS department.

Eval. View

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Object: Achieve and maintain fully staffed stores with high quality management and hourly employees. Process Date 4-22-2004 11:50:6

| Eval | Rating                                                                                                                             | Category Scales Results from Qtrly PM                                                                                                                                                                                                                    | Focus Area    |
|------|------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| Eval | 5: Role Model: (0.2% or less)                                                                                                      | 1) Meet overtime % related to total labor cost<br>5: Role Model: (0.2% or less)<br>4: Exceeds Standards: (0.21% to 0.3%)<br>3: Meets Standards: (0.31% to 0.4%)<br>2: Needs Improvement: (0.41% to 0.6%)<br>1: Unacceptable: (0.61% or greater)          | N/A           |
| Eval | 5: Role Model: (98. or less)                                                                                                       | 2) Achieve hourly employee turnover goal (Goal = 115% annualized)<br>5: Role Model: (98. or less)<br>4: Exceeds Standards: (99 to 109.)<br>3: Meets Standards: (110 to 120.)<br>2: Needs Improvement: (121 to 145.)<br>1: Unacceptable: (146 or greater) | N/A           |
| Eval | 3: Meets Standards                                                                                                                 | 3) Staffing and Retention                                                                                                                                                                                                                                |               |
|      | 3.1 Develops and implements appropriate staffing and succession plans.                                                             |                                                                                                                                                                                                                                                          | Strength      |
|      | 3.2 Hires appropriately qualified candidates through effective interviewing and selection processes.                               |                                                                                                                                                                                                                                                          | Developmental |
|      | 3.3 Follows procedures outlined in the Staffing and Retention guide. Follows Best Practices guidelines for staffing and retention. |                                                                                                                                                                                                                                                          | N/A           |
|      | 3.4 Creates a work atmosphere where employees feel appreciated and motivated to perform and remain with Cracker Barrel.            |                                                                                                                                                                                                                                                          | Strength      |
|      | 3.5 Confronts and resolves employee conflicts and morale issues.                                                                   |                                                                                                                                                                                                                                                          | Strength      |
|      | 3.6 Supports and promotes quality of life initiatives.                                                                             |                                                                                                                                                                                                                                                          | N/A           |



Ex. 107 - View

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|   |                                                                                                                                                                                          |                                                       |          |
|---|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|----------|
| E | 3.7 Evaluations are performed on a timely basis per the review cycle.                                                                                                                    |                                                       | N/A      |
|   | 3.8 Interviews all applicants and has a good application system in place.                                                                                                                |                                                       | N/A      |
|   | 3.9 Uses designated skill trainers for all positions and meets regularly to improve training.                                                                                            |                                                       | N/A      |
| E | 3: Meets Standards                                                                                                                                                                       | 4) Leading, Developing, and Communicating with Others |          |
|   | 4.1 Communicates Cracker Barrel mission, vision, values, and goals to employees. Motivates and gains commitment from others. Schedules and holds weekly operational management meetings. |                                                       | N/A      |
|   | 4.2 Holds managers and staff accountable to Cracker Barrel Standards.                                                                                                                    |                                                       | Strength |
|   | 4.3 Trains managers and employees effectively, using a hands-on approach when necessary.                                                                                                 |                                                       | N/A      |
|   | 4.4 Provides specific, constructive and well-balanced feedback to retail counterpart, subordinates, peers, and supervisors on an ongoing basis.                                          |                                                       | N/A      |
|   | 4.5 Effectively manages PAR program to develop employees.                                                                                                                                |                                                       | Strength |
|   | 4.6 Listens actively; promotes and practices open door policy and manager is approachable.                                                                                               |                                                       | N/A      |
|   | 4.7 Communicates clearly, candidly and honestly; avoids ambiguity and mixed messages.                                                                                                    |                                                       | N/A      |
|   | 4.8 Effectively uses situational leadership skills to communicate with others.                                                                                                           |                                                       | N/A      |
|   | 4.9 Participates in MIT and Associate Manager development as outlined in the Associate Manager Development Guide.                                                                        |                                                       | N/A      |
| E | 3: Meets Standards                                                                                                                                                                       | 5) Administering Policies and Procedures              |          |
|   | 5.1 Executes Cracker Barrel's orientation and skills training programs for new employees.                                                                                                |                                                       | Strength |

Eval: [unclear] View

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|       |                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-------|-------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|       | 5.2 Documents and manages discipline and/or performance problems in accordance with Cracker Barrel's policies and procedures. | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|       | 5.3 Demonstrates a working knowledge of fair employment policies and guidelines (EEO guidelines, hiring minors, OSHA, etc.).  | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|       | 5.4 Supports and executes responsibilities associated with the performance management process.                                | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|       | 5.5 Leads and supports all Best Practices initiatives.                                                                        | Strength                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Eval: | Objective Comment                                                                                                             | 3-1 Has submitted staffing plans and staffing needs in a timely manner. 3-2 Some poor selections in staffing. Need to better qualify applicants. 3-4 Well respected by employees. 3-5 Performs documentation in a fair and consistent manner. 3-5 Is approachable and resolves issues. 4-2 Instructs managers on proper procedures. 4-5 Clear concise evals along with hospitality appraisals. 5-1 Participates in orientations and PAR O. 5-5 Quotes from BP manuals to guide daily decisions. |
| Core: | Point Subtotal                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Eval: | Performance Measurements:                                                                                                     | 19.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|       | Performance Behaviors:                                                                                                        | 30.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

Eval: View

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Objective 2: Improve guest perceptions. Process Date 4-22-2004 11:50:8

| Rating                                                                                                                    | Category Scales Results from Qtrly PM                                                                                                                                                                                                                                                 | Focus Area |
|---------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 1: Unacceptable: (8 or more guest complaints)                                                                             | 6) Number of guest complaints<br>5: Role Model: (0 to 1, guest complaints)<br>4: Exceeds Standards: (2 to 3, guest complaints)<br>3: Meets Standards: (4 to 5, guest complaints)<br>2: Needs Improvement: (6 to 7, guest complaints)<br>1: Unacceptable: (8 or more guest complaints) | N/A        |
| 2: Needs Improvement: (75 to 84.)                                                                                         | 7) Store Visit Report (average of two scores)<br>1: Unacceptable: (74, or below)<br>2: Needs Improvement: (75 to 84.)<br>3: Meets Standards: (85 to 88.)<br>4: Exceeds Standards: (89 to 93.)<br>5: Role Model: (94 or above)                                                         | N/A        |
| 4: Exceeds Standards                                                                                                      | 8) Building and Maintaining Guest Relations                                                                                                                                                                                                                                           |            |
| 8.1 Educates and empowers employees to please guests.                                                                     | Strength                                                                                                                                                                                                                                                                              |            |
| 8.2 Interacts frequently with guests in dining room (e.g. table visits) and retail store in a friendly, courteous manner. | Strength                                                                                                                                                                                                                                                                              |            |
| 8.3 Follows through on commitments made to internal and external guests (e.g. follow through with complaints).            | N/A                                                                                                                                                                                                                                                                                   |            |
| 8.4 Resolves guest problems or needs using S.T.A.R.S. Sets an example for employees.                                      | N/A                                                                                                                                                                                                                                                                                   |            |
| 8.5 Provides service to guests that exceeds their needs and expectations.                                                 | N/A                                                                                                                                                                                                                                                                                   |            |



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|                                                                                                                                                       |                                        |               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|---------------|
| 8.6 Staff is friendly, smiles, and demonstrates pleasing people practices.                                                                            |                                        | N/A           |
| 4: Exceeds Standards                                                                                                                                  | 9) Planning and Supervising Operations |               |
| 9.1 Does accurate sales and labor forecasts. Anticipates and responds to volume fluctuations / bottlenecks and takes appropriate action.              |                                        | N/A           |
| 9.2 Manages multiple tasks and responsibilities simultaneously. Organized and uses day planner effectively. Meets all company and district deadlines. |                                        | Strength      |
| 9.3 Considers employee training, breaks, and special requests when preparing schedules.                                                               |                                        | N/A           |
| 9.4 Uses organizational skills. Prioritizes, delegates, and follows-up to maintain a smooth operation.                                                |                                        | Strength      |
| 9.5 Plans shifts using appropriate tools (e.g. PEP Talk, shift cards, production charts, Ally Rally, Red Book) to ensure store readiness.             |                                        | N/A           |
| 9.6 Determines Behaviors that need improvement; develops and implements goals and plans which successfully address these Behaviors.                   |                                        | N/A           |
| 3: Meets Standards                                                                                                                                    | 10) Safety, Security, and Sanitation   |               |
| 10.1 Follows all HACCP guidelines.                                                                                                                    |                                        | Developmental |
| 10.2 Meets all Cracker Barrel asset protection policy, cash management, safety, security, and sanitation standards.                                   |                                        | N/A           |
| 10.3 Maintains property, building, and equipment function at all times.                                                                               |                                        | N/A           |
| 10.4 Performs regular walk-thrus and holds all employees accountable for safety, security, and sanitation.                                            |                                        | Strength      |
| 10.5 Performs all required safety and sanitation inspections and makes adjustments as necessary.                                                      |                                        | N/A           |
| 10.6 Ensures regular inspection of restrooms.                                                                                                         |                                        | N/A           |
| 10.7 Monitors dating and rotating shelf-life on boxes and food packages.                                                                              |                                        | N/A           |
| 10.8 Makes regular supervised trash runs throughout shift.                                                                                            |                                        | N/A           |



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|                        |                                                                                                                                                                                                                                                                                          |          |
|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| E. J.                  | 10.9 Educates and trains hourly staff and other managers on proper safety and security procedures.                                                                                                                                                                                       | Strength |
|                        | 10.10 Promotes the "clean as you go" policy.                                                                                                                                                                                                                                             | N/A      |
| Objective 2<br>Comment | 8-1 The guest comes first! 8-2 Very good guest service skills overall. Very good retail awareness. 9-2 & 9-4 Highly organized to complete a large task list. 10-1 HACCP needs improvement. 10-4 Very good awareness to all safety and security process. Aware of Loss Prevention issues. |          |
| Object                 | 2: Point Subtotal                                                                                                                                                                                                                                                                        |          |
| E. J.                  | Performance Measurements                                                                                                                                                                                                                                                                 | 5.00     |
|                        | Performance Behaviors                                                                                                                                                                                                                                                                    | 34.40    |

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Object: 3: Improve store margins. Process Date 4-22-2004 11:50:10

| Rating                                           | Category Scales Results from Qtrly PM                                                                                                                                                                                                                                                 | Focus Area |
|--------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 1: Unacceptable: (greater than or equal to +0.2) | 11) Achieve restaurant labor goal<br>5: Role Model: (less than or equal to -0.3)<br>4: Exceeds Standards: (-0.29 to -0.1)<br>3: Meets Standards: (-0.09 to 0.00)<br>2: Needs Improvement: (+0.01 to +0.19)<br>1: Unacceptable: (greater than or equal to +0.2)                        | N/A        |
| 4: Exceeds Standards: (-0.29 to -0.1)            | 12) Achieve food cost goal<br>5: Role Model: (less than or equal to -0.3)<br>4: Exceeds Standards: (-0.29 to -0.1)<br>3: Meets Standards: (-0.09 to +0.09)<br>2: Needs Improvement: (+0.1 to +0.39)<br>1: Unacceptable: (greater than or equal to +0.4)                               | N/A        |
| 1: Unacceptable: (+3.07% or greater)             | 13) Reduce retail inventory shrinkage to hit targeted goal (Goal = 2.3%)<br>5: Role Model: (+1.54% or less)<br>4: Exceeds Standards: (+1.55% to +2.04%)<br>3: Meets Standards: (+2.05% to +2.55%)<br>2: Needs Improvement: (+2.56% to +3.06%)<br>1: Unacceptable: (+3.07% or greater) | N/A        |
| 3: Meets Standards                               | 14) Maintaining Sales and Quality of Operation                                                                                                                                                                                                                                        |            |
|                                                  | 14.1 Manages production, labor, and other costs using Cracker Barrel tools to achieve planned targets.                                                                                                                                                                                | N/A        |

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|             |                                                                                                                                                            |                                                                                                                                                                                                                                                                           |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| E: ju: View | 14.2 Follows company mandatory food cost requirements.                                                                                                     | Strength                                                                                                                                                                                                                                                                  |
|             | 14.3 Increases sales and profitability through shift execution and appropriate sales-building strategies (using a seating index and appropriate staffing). | Strength                                                                                                                                                                                                                                                                  |
|             | 14.4 Maximizes productivity of self and others.                                                                                                            | N/A                                                                                                                                                                                                                                                                       |
|             | 14.5 Takes initiative to solve operational problems that arise.                                                                                            | N/A                                                                                                                                                                                                                                                                       |
|             | 14.6 Labor - schedules properly for the volume to hit the targeted goals.                                                                                  | Developmental                                                                                                                                                                                                                                                             |
|             | 14.7 Demonstrates an understanding of the impact of all decisions on Cracker Barrel profits.                                                               | N/A                                                                                                                                                                                                                                                                       |
|             | 14.8 Uses data to make appropriate decisions to maximize sales.                                                                                            | N/A                                                                                                                                                                                                                                                                       |
|             | 14.9 Adheres to Cracker Barrel product and guest service standards.                                                                                        | N/A                                                                                                                                                                                                                                                                       |
|             | 14.10 Adheres to Cracker Barrel food quality and recipe standards.                                                                                         | N/A                                                                                                                                                                                                                                                                       |
|             | 14.11 Trains and maintains proper procedures on guest check, exception reporting, service comps, manager unknowns, voids, and meal policies.               | Strength                                                                                                                                                                                                                                                                  |
|             | 14.12 Has proper (minimum standards) levels of small wares in service to assure a smooth operation.                                                        | N/A                                                                                                                                                                                                                                                                       |
|             | 14.13 Partners with management team to reduce shrinkage.                                                                                                   | N/A                                                                                                                                                                                                                                                                       |
|             | 14.14 Reduces shrinkage through the use of the "Effective Shrinkage Management" tool.                                                                      | N/A                                                                                                                                                                                                                                                                       |
|             | 14.15 Ensures compliance to Retail Audit Procedures.                                                                                                       | Strength                                                                                                                                                                                                                                                                  |
|             | 14.16 Follows Asset Protection Policy.                                                                                                                     | N/A                                                                                                                                                                                                                                                                       |
|             | Objective 3<br>Comment                                                                                                                                     | 14.2 Has performed Targeted food review with appropriate action plans. 14.3 Leads employees to do their best, motivates well. 14.6 Some issues with scheduling, schedule holes. 14.11 Excellent with administrative responsibilities. 14.14 Audits all retail procedures. |
|             | 3: Point Subtotal                                                                                                                                          |                                                                                                                                                                                                                                                                           |

E. Ju. View

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|                           |       |
|---------------------------|-------|
| Performance Measurements: | 8.60  |
| Performance Behaviors:    | 14.40 |

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Object 4: Exceed the Financial Plan Process Date 4-22-2004 11:50:11

| Rating                                          | Category Scales Results from Qtrly PM                                                                                                                                                                                                                                                                            | Focus Area |
|-------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 5: Role Model: NOI v/s LY: (+20.01% or greater) | 15) Net Operating Income (NOI) v/s Last Year NOI<br><br>1: Unacceptable: NOI v/s LY: (0%)<br>2: Needs Improvement: NOI v/s LY: (+0.01% to +7.5%)<br>3: Meets Standards: NOI v/s LY: (+7.51% to +15.09%)<br>4: Exceeds Standards: NOI v/s LY: (+15.1% to +20%)<br>5: Role Model: NOI v/s LY: (+20.01% or greater) | N/A        |
| 5: Role Model Rsales: (+6.1% or greater)        | 16) Real Net Restaurant Sales Growth<br><br>1: Unacceptable Rsales: (-3.6% or below)<br>2: Needs Improvement Rsales: (-3.59% to +3.39%)<br>3: Meets Standards Rsales: (+3.4% to +5.49%)<br>4: Exceeds Standards Rsales: (+5.5% to +6.09%)<br>5: Role Model Rsales: (+6.1% or greater)                            | N/A        |
| 3: Meets Standards: (-0.09% to +3.9%)           | 17) Achieve Retail Sales v/s Last Year<br><br>1: Unacceptable: (-3.6% or below)<br>2: Needs Improvement: (-3.59% to -0.1%)<br>3: Meets Standards: (-0.09% to +3.9%)<br>4: Exceeds Standards: (+3.91% to +5.99%)<br>5: Role Model: (+6% or greater)                                                               | N/A        |
| Objective 4 Comment                             |                                                                                                                                                                                                                                                                                                                  |            |
| Object 4: Point Subtotal                        |                                                                                                                                                                                                                                                                                                                  |            |

Eval. View

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|                           |              |
|---------------------------|--------------|
| Performance Measurements: | 23.80        |
| Performance Behaviors:    | Subtotal N/A |

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E. Ju View

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## 2004: Performance Summary

Process Date 4-22-2004 11:50:12

| Objective                                          | Performance Areas         | Eval 1 |
|----------------------------------------------------|---------------------------|--------|
| 1                                                  | Performance Measurements: | 19     |
|                                                    | Performance Behaviors:    | 30     |
| 2                                                  | Performance Measurements: | 5      |
|                                                    | Performance Behaviors:    | 34.4   |
| 3                                                  | Performance Measurements: | 8.6    |
|                                                    | Performance Behaviors:    | 14.4   |
| 4                                                  | Performance Measurements: | 23.8   |
|                                                    | Performance Behaviors:    |        |
| Current Evaluation Performance Measurements Score: |                           | 56.4   |
| Current Evaluation Performance Behaviors Score:    |                           | 78.8   |
| Current Evaluation Overall Performance Rating:     |                           | 3      |

E: to View

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|        |                                                |                                                                                                                            |
|--------|------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
| IMAGED | Overall Annual Performance Measurements Score: | 56.4                                                                                                                       |
|        | Overall Annual Performance Behaviors Score:    | 78.8                                                                                                                       |
|        | 2004 Overall Annual Rating:                    | 3                                                                                                                          |
|        | 2004 Rating Scale:                             | 1 = 19.0000 - 29.4999<br>2 = 29.5000 - 49.4999<br>3 = 49.5000 - 69.4999<br>4 = 69.5000 - 89.4999<br>5 = 89.5000 - 100.0000 |

Rodgers v. Cracker Barrel  
Def. Initial Disc. 0118



## Individual Development Program

Date 4-22-2004 11:50:12

| Developmental                                             | Resources                                                 | Method                                                  | Follow-up |
|-----------------------------------------------------------|-----------------------------------------------------------|---------------------------------------------------------|-----------|
| Plan                                                      | needed                                                    | to Measure                                              | Date      |
| Ability to develop Manager in Supply and Labor Management | AMDG, BP manuals and Read "Developing Leaders Around You" | Successful completion of the AMDG with positive results | 7/30/04   |
|                                                           |                                                           |                                                         |           |
|                                                           |                                                           |                                                         |           |

| Current                                              | Recommendations | (Check) | Comments         |
|------------------------------------------------------|-----------------|---------|------------------|
| Remain in current position for continued development | -X-             |         |                  |
| Developmental Projects                               | -X-             |         | running the unit |
| Promote                                              | --              |         |                  |
| Willing to relocate                                  | --              |         |                  |
| Special interests                                    | --              |         |                  |

E. Ju Year

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Final - 2004 Performance Comments and Signatures

Comments:

Dwight has excellent skills in administration and development. He has learned Food management, PAR, and is an excellent multitasker. He is now currently towards mastering running the unit. This will be the next in his development. He is doing a very good job.

Improvement(s) from last evaluation:

an improvement in labor management however has more to go.

Developmental Needs: dwight

round out his career and put the whole concept together. He will do this via running the unit.

Comments:

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Evaluation View

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Employee's  
Signature:

Supervisor's  
Signature:

Second Level Review  
Signature:

**Definition for Second Level Review and Signature**

1. Associate Manager and Senior Associate Manager evaluations performed by General Manager, the Second Level Review is the District Manager.

~OR~

2. General Manager and Retail Manager evaluations performed by District Manager, the Second Level Review is the Regional Vice President.

I accept and understand Cracker Barrel's Equal Employment Opportunity policy, Anti-harassment policy, and Open Door policy; and that employees may utilize the company's toll free number (1-888-648-DOOR) to report complaints or violations of these policies. I understand that the company may be held responsible for acts of harassment that I commit, condone, tolerate, or fail to investigate. I further understand that if I violate any aspect of these policies that I will be subject to immediate discipline, up to and including termination, and that I can be sued and may be held personally liable for my acts or omissions. Therefore, I acknowledge and confirm that I am not aware of any observed, alleged, experienced, or reported harassment, including discrimination or sexual harassment. I commit that I will report any such knowledge or awareness of possible

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violations of these policies to my immediate supervisor or the Employee Relations Department. "

Employee signature: \_\_\_\_\_

Process Date 4-18-2004 21:7:28

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Def. Initial Disc. 0122



Cracker Barrel Old Country Store, Inc.  
FY 2003 Associate Manager Performance Evaluation

FY03 1st Semi-Annual Evaluation

FY 2003 Associate Manager Performance Evaluation

THIS PAGE MUST BE COMPLETED TO CONTINUE.

Associate Manager's Name: Dwight Rodgers

Associate Mgr. Employee Number: 364839

General Manager Name: Thomas K. Speziale

General Mgr. Employee Number: 846425

Store Number: 505

DM Name: George Katsoulas

District Number: 47

Evaluation Cycle: FY 2003 1st Semi-Annual Evaluation

Evaluation Date: 8/21/2003

THIS PAGE MUST BE PRINTED WHEN EVALUATION IS SUBMITTED TO HR

1. All Associate Managers will receive a signed, paper copy of their evaluation.
2. District Managers will receive and process all Store Management evaluations through Home Office.



**Cracker Barrel Old Country Store, Inc.**  
**FY 2003 Associate Manager Performance Evaluation**

**FY 2003 Associate Manager Standards, Weights, and Rating Scales**

**Company Goal: "To Become the Best Restaurant Company in America"**

Performance Measures = 60 points  
 Performance Behaviors = 120 points

| Objective 1: Achieve and maintain fully staffed stores with high quality management and hourly employees.                                                                                 |        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| Performance Measurements                                                                                                                                                                  | Weight |
| 1) Meet overtime % related to total labor cost                                                                                                                                            | 5      |
| 1: Unacceptable: (.81% or greater)<br>2: Needs Improvement: (.41% to .80%)<br>3: Meets Standards: (.31% to .40%)<br>4: Exceeds Standards: (.21% to .30%)<br>5: Role Model: (.20% or less) |        |
| 2) Achieve hourly turnover goal (Goal = 120% annualized)                                                                                                                                  | 14     |
| 1: Unacceptable: (145 or greater)<br>2: Needs Improvement: (128 to 145)<br>3: Meets Standards: (118 to 127)<br>4: Exceeds Standards: (101 to 117)<br>5: Role Model: (100 or less)         |        |
| Performance Behaviors                                                                                                                                                                     |        |
| 3) Staffing and Retention                                                                                                                                                                 | 24     |
| 4) Leading, Developing, and Communicating with Others                                                                                                                                     | 14     |
| 5) Administering Policies and Procedures                                                                                                                                                  | 12     |

| Objective 2: Improve guest perceptions.                                                                                                                                                                                                      |        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| Performance Measurements                                                                                                                                                                                                                     | Weight |
| 6) Number of guest complaints                                                                                                                                                                                                                | 6      |
| 1: Unacceptable: (8 or more guest complaints)<br>2: Needs Improvement: (6 - 7 guest complaints)<br>3: Meets Standards: (4 - 5 guest complaints)<br>4: Exceeds Standards: (2 - 3 guest complaints)<br>5: Role Model: (0 - 1 guest complaints) |        |
| 7) Store Visit Report (average of two scores)                                                                                                                                                                                                | 6      |
| 1: Unacceptable: (74 or below)<br>2: Needs Improvement: (75 to 84)<br>3: Meets Standards: (85 to 89)<br>4: Exceeds Standards: (90 to 93)<br>5: Role Model: (94 or better)                                                                    |        |
| Performance Behaviors                                                                                                                                                                                                                        |        |
| 8) Building and Maintaining Guest Relations                                                                                                                                                                                                  | 22     |
| 9) Planning and Supervising Operations                                                                                                                                                                                                       | 12     |
| 10) Safety, Security, and Sanitation                                                                                                                                                                                                         | 12     |

| Objective 3: Improve store margins.                                                                                                                                                                                   |        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| Performance Measurements                                                                                                                                                                                              | Weight |
| 11) Achieve restaurant labor goal                                                                                                                                                                                     | 8      |
| 1: Unacceptable: (greater than or equal to +.20)<br>2: Needs Improvement: (+.01 to +.19)<br>3: Meets Standards: (-.09 to 0)<br>4: Exceeds Standards: (-.29 to -.10)<br>5: Role Model: (less than or equal to -.30)    |        |
| 12) Achieve food cost goal                                                                                                                                                                                            | 8      |
| 1: Unacceptable: (greater than or equal to +.40)<br>2: Needs Improvement: (+.10 to +.39)<br>3: Meets Standards: (-.08 to +.08)<br>4: Exceeds Standards: (-.29 to -.10)<br>5: Role Model: (less than or equal to -.30) |        |
| 13) Reduce inventory shrinkage to HLT targeted goal                                                                                                                                                                   | 3      |
| 1: Unacceptable: (+3.75% or greater)<br>2: Needs Improvement: (+3.25% to +3.75%)<br>3: Meets Standards: (+2.75% to +3.25%)<br>4: Exceeds Standards: (+2.25% to +2.74%)<br>5: Role Model: (+2.24% or less)             |        |
| Performance Behaviors                                                                                                                                                                                                 |        |
| 14) Maintaining Sales and Quality of Operation                                                                                                                                                                        | 24     |

| Objective 4: Exceed the financial plan.                                                                                                                                                                                                            |        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| Performance Measurements                                                                                                                                                                                                                           | Weight |
| 15) Net Operating Income (OI) vs Last Year OI                                                                                                                                                                                                      | 12     |
| 1: Unacceptable OI vs LY: (-0.00%)<br>2: Needs Improvement OI vs LY: (-0.01% to +7.50%)<br>3: Meets Standards OI vs LY: (+7.51% to +15.00%)<br>4: Exceeds Standards OI vs LY: (+15.01% to +20.00%)<br>5: Role Model OI vs LY: (+20.01% or greater) |        |
| 16) Total Net Restaurant Sales Growth                                                                                                                                                                                                              | 11     |
| 1: Unacceptable Rates: (-3.50% or below)<br>2: Needs Improvement Rates: (-3.50% to +3.50%)<br>3: Meets Standards Rates: (+3.50% to +5.99%)<br>4: Exceeds Standards Rates: (+6.00% to +8.99%)<br>5: Role Model Rates: (+9.00% or greater)           |        |
| 17) Achieve Retail Sales vs Last Year                                                                                                                                                                                                              | 3      |
| 1: Unacceptable: (-3.50% or below)<br>2: Needs Improvement: (-3.50% to +0.10%)<br>3: Meets Standards: (+0.10% to +3.00%)<br>4: Exceeds Standards: (+3.01% to +5.99%)<br>5: Role Model: (+6.00% or greater)                                         |        |

**General Rating Scale**

- 1: Unacceptable
- 2: Needs Improvement
- 3: Meets Standards
- 4: Exceeds Standards
- 5: Role Model

Performance fails to meet job requirements and requires immediate improvement.  
 Performance is somewhat below job requirements and requires attention.  
 Performance is acceptable and meets job requirements.  
 Performance is excellent and usually exceeds job requirements.  
 Performance is outstanding and consistently exceeds job requirements.

**Performance Ratings (Overall Performance rating averages both performance measures and behaviors)**

**Overall Rating Scale**

- 1 = 19 - 28.49 points
- 2 = 29.50 - 40.49 points
- 3 = 41.50 - 59.49 points
- 4 = 60.50 - 89.49 points
- 5 = 90.50 - 100 points

Cracker Barrel Old Country Store, Inc.  
FY 2003 Associate Manager Performance Evaluation

FY03 1st Semi-Annual Evaluation

Assoc. Manager Name: Dwight Rodgers  
Employee Number: 954038  
GM Name: Thomas K. Speziale  
General Mgr. Employee Number: 045425  
Store Number: 505

Objective 1: Achieve and maintain fully staffed stores with high quality management and hourly employees.

Performance Measurements:

| 1st Semi                         | 2nd Semi | 3rd Semi                                                          | Focus Area |
|----------------------------------|----------|-------------------------------------------------------------------|------------|
| 1. Meet Inventory (41% to 49%)   | ▼        | 1) Meet overtime % related to total labor cost                    | ▼          |
| 2. Exceed Standards (101 to 115) | ▼        | 2) Achieve hourly employee turnover goal (Goal = 120% annualized) | ▼          |

Performance Behaviors:

| 1st Semi                | 2nd Semi | 3rd Semi                                                                                                                         | Focus Area    |
|-------------------------|----------|----------------------------------------------------------------------------------------------------------------------------------|---------------|
| 3) Staffing & Retention | ▼        | 3.1 Develops and implements appropriate staffing and succession plans.                                                           | Strength      |
| 3.1 Meets Standards     | ▼        | 3.2 Hires appropriately qualified candidates through selective interviewing and selection processes.                             | Strength      |
|                         | ▼        | 3.3 Follows procedures outlined in the Staffing & Retention guide. Follows Best Practices guidelines for staffing and retention. | Developmental |
|                         | ▼        | 3.4 Creates a work atmosphere where employees feel appreciated and motivated to perform and growth with Cracker Barrel.          | Strength      |
|                         | ▼        | 3.5 Controls and resolves employee conflicts and morale issues.                                                                  | Strength      |
|                         | ▼        | 3.6 Supports and promotes quality of life initiatives.                                                                           | Strength      |
|                         | ▼        | 3.7 Evaluations are performed on a timely basis per the review cycle.                                                            | Strength      |
|                         | ▼        | 3.8 Interviews all applicants and has a great reputation across the place.                                                       | Strength      |
|                         | ▼        | 3.9 Uses designated skill matrix for all positions and meets regularly to improve training.                                      | Strength      |

| 1st Semi                                              | 2nd Semi | 3rd Semi                                                                                                                                                                            | Focus Area |
|-------------------------------------------------------|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 4) Leading, Developing, and Communicating with Others | ▼        | 4.1 Communicates Cracker Barrel vision, vision, values and goals to employees. Motivate and gain commitment from others. Schedules and leads weekly governance management meetings. | Strength   |
| 4.2 Exceeds Standards                                 | ▼        | 4.2 Holds managers and staff accountable to Cracker Barrel Standards.                                                                                                               | Strength   |
|                                                       | ▼        | 4.3 Trains employees effectively, using a hands-on approach when necessary.                                                                                                         | Strength   |
|                                                       | ▼        | 4.4 Provides positive, constructive and well-balanced feedback to retail counterparts, subordinates, peers, and supervisors on an ongoing basis.                                    | Strength   |
|                                                       | ▼        | 4.5 Effectively manages PDR program to develop employees.                                                                                                                           | Strength   |
|                                                       | ▼        | 4.6 Sets, achieves, promotes and practices span of control and manager is approachable.                                                                                             | Strength   |
|                                                       | ▼        | 4.7 Communicates clearly, candidly, and honestly, avoids ambiguity and mixed messages.                                                                                              | Strength   |
|                                                       | ▼        | 4.8 Effectively uses emotional leadership skills to communicate with others.                                                                                                        | Strength   |
|                                                       | ▼        | 4.9 Participates in MT and Associate Manager development as outlined in the Associate Manager Development Guide.                                                                    | Strength   |

| 1st Semi                               | 2nd Semi | 3rd Semi                                                                                                                     | Focus Area    |
|----------------------------------------|----------|------------------------------------------------------------------------------------------------------------------------------|---------------|
| 5) Administering Policies & Procedures | ▼        | 5.1 Discusses Cracker Barrel's orientation and training programs for new employees.                                          | Strength      |
| 5.2 Meets Standards                    | ▼        | 5.2 Documents and manages discipline under performance problems in accordance with Cracker Barrel's policies and procedures. | Strength      |
|                                        | ▼        | 5.3 Demonstrates a working knowledge of fair employment policies and guidelines (EEO guidelines, hiring minors, OSHA, etc.). | Strength      |
|                                        | ▼        | 5.4 Supports and manages responsibility associated with the performance management process.                                  | Strength      |
|                                        | ▼        | 5.5 Follows all Best Practices initiatives.                                                                                  | Developmental |

Each Performance Measure and Behavior MUST have a rating to calculate the Objective Subtotal. If not, "NOT COMPLETE" will be displayed. Go back and review results.

| 1st Semi | 2nd Semi | 3rd Semi | Focus Area                             |
|----------|----------|----------|----------------------------------------|
|          |          |          | Objective 1 Point Subtotal:            |
|          |          |          | Performance Measurements: 13.20        |
|          |          |          | Performance Behaviors: 22.80           |
|          |          |          | Performance Measurements: NOT COMPLETE |
|          |          |          | Performance Behaviors: NOT COMPLETE    |

**Cracker Barrel Old Country Store, Inc.**  
**FY 2003 Associate Manager Performance Evaluation**

FY03 1st Semi-Annual Evaluation

Assoc. Manager Name: Deight Rodgers  
 Employee Number: 364639  
 GM Name: Thomas K. Spurlin  
 General Mgr. Employee Number: 646425  
 Store Number: 605

**Objective 2: Improve guest perceptions.**

## Performance Measurements:

| 1st Semi | 1: Unacceptable: (If or more guest complaints) | 1: Number of guest complaints | Focus Area: |
|----------|------------------------------------------------|-------------------------------|-------------|
| 2nd Semi |                                                |                               |             |

| 1st Semi | 2: Meets Standards (85 to 90) | 2: Store Visit Report (average of two scores) | Focus Area: |
|----------|-------------------------------|-----------------------------------------------|-------------|
| 2nd Semi |                               |                                               |             |

## Performance Behaviors:

| 3) Building and Maintaining Guest Relations |                    |   | 3.1 Educates and empowers employees to please guests.                                                                     | Strength |
|---------------------------------------------|--------------------|---|---------------------------------------------------------------------------------------------------------------------------|----------|
| 1st Semi                                    | 3) Meets Standards | ▼ | 3.2 Interacts frequently with guests in dining room (e.g., table visit) and retail store in a friendly, courteous manner. | Strength |
| 2nd Semi                                    |                    | ▼ | 3.3 Follows through on commitments made to internal and external guests (i.e., follow through with complaints).           | ▼        |
|                                             |                    |   | 3.4 Resolves guest problems or needs using S.T.A.R.T.S. Sets an example for employees.                                    | Strength |
|                                             |                    |   | 3.5 Provides service to guests that exceeds their needs and expectations.                                                 | ▼        |
|                                             |                    |   | 3.6 Shows energy, smiles, and demonstrates pleasing people practices.                                                     | ▼        |

|          |                                        |                                                                                                                                                       |               |   |
|----------|----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|---|
|          | 4: Planning and Supervising Operations | 4.1 Does accurate sales and labor forecasts. Anticipates and responds to volume fluctuations / bottlenecks and takes appropriate action.              | Developmental | ▼ |
| 1st Semi | 4: Exceeds Standards                   | 4.2 Manages multiple tasks and responsibilities systematically. Organized and uses day planner effectively. Meets all company and district deadlines. |               | ▼ |
| 2nd Semi |                                        | 4.3 Considers employee parking, breaks, and special requests when preparing schedules.                                                                |               | ▼ |
|          |                                        | 4.4 Uses organizational skills. Prioritizes, delegates, and follows up to maintain a smooth operation.                                                | Strength      | ▼ |
|          |                                        | 4.5 Plans shifts using appropriate tools (e.g., REP, shift card, production chart, My Busy, Red Book) to ensure store readiness.                      | Strength      | ▼ |
|          |                                        | 4.6 Determines behaviors that need improvement, develops and implements goals and plans which successfully address these behaviors.                   |               | ▼ |

| 1st Semi | 5: Meets Standards | 5: Safety, Security, and Sanitation | 5.1 Follows all HACCP guidelines.                                                                                 | Strength      |
|----------|--------------------|-------------------------------------|-------------------------------------------------------------------------------------------------------------------|---------------|
| 2nd Semi |                    |                                     | 5.2 Meets all Cracker Barrel food protection policy, path management, safety, security, and sanitation standards. | Strength      |
|          |                    |                                     | 5.3 Maintains property, building, and equipment function at all times.                                            | Developmental |
|          |                    |                                     | 5.4 Performs regular walk-around and holds all employees accountable for safety, security, and sanitation.        |               |
|          |                    |                                     | 5.5 Performs all required safety and sanitation inspections and makes adjustments as necessary.                   | Strength      |
|          |                    |                                     | 5.6 Extends regular inspection of restrooms.                                                                      | Strength      |
|          |                    |                                     | 5.7 Monitors dining and retail shelf life on boxes and food packages.                                             |               |
|          |                    |                                     | 5.8 Makes regular supervised walk-through throughout shift.                                                       |               |
|          |                    |                                     | 5.9 Educates and trains hourly staff and other managers on proper safety and security procedures.                 |               |
|          |                    |                                     | 5.10 Promotes the "clean as you go" policy.                                                                       | Strength      |

Each Performance Measure and Behavior MUST have a rating to calculate the Objective Subtotal.  
 If not, "NOT COMPLETE" will be displayed. Go back and review results.

| 1st Semi | Objective 2 Point Subtotal:            |
|----------|----------------------------------------|
| 2nd Semi | Performance Measurements: 8.50         |
|          | Performance Behaviors: 30.00           |
|          | Performance Measurements: NOT COMPLETE |
|          | Performance Behaviors: NOT COMPLETE    |



## FY03 1st Semi Annual Evaluation

Cracker Barrel Old Country Store, Inc.  
FY 2003 Associate Manager Performance EvaluationAssoc. Manager Name: Dwight Rodgers  
Employee Number: 354839  
GM Name: Thomas K. Spiciale  
General Mgr. Employee Number: 348425  
Store Number: 935

## Objective 3: Improve store margins.

## Performance Measurements:

| 1st Semi | 2nd Semi | 3rd Semi | 4th Semi | Focus Area                                         |
|----------|----------|----------|----------|----------------------------------------------------|
| 1        | 2        | 3        | 4        | 11) Achieve restaurant labor goal                  |
| 1        | 2        | 3        | 4        | 12) Achieve food cost goal                         |
| 1        | 2        | 3        | 4        | 13) Reduce inventory shrinkage to 90 targeted goal |

## Performance Behaviors:

## Actions:

## Focus Areas:

| 1st Semi | 2nd Semi | 3rd Semi | 4th Semi | Focus Area                                                                                                                                                |
|----------|----------|----------|----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1        | 2        | 3        | 4        | 14.1 Manage production, labor, and other costs using Cracker Barrel tools to achieve planned targets.                                                     |
| 1        | 2        | 3        | 4        | 14.2 Follow company mandatory food cost requirements.                                                                                                     |
| 1        | 2        | 3        | 4        | 14.3 Increase sales and profitability through staff education and appropriate sales-building strategies (using a selling index and appropriate staffing). |
| 1        | 2        | 3        | 4        | 14.4 Maximize productivity of self and others.                                                                                                            |
| 1        | 2        | 3        | 4        | 14.5 Take initiative to solve operational problems that arise.                                                                                            |
| 1        | 2        | 3        | 4        | 14.6 Labor - Schedule properly for the volume to fill the targeted goals.                                                                                 |
| 1        | 2        | 3        | 4        | 14.7 Demonstrate an understanding of the impact of all decisions on Cracker Barrel profits.                                                               |
| 1        | 2        | 3        | 4        | 14.8 Use data to make appropriate decisions to enhance sales.                                                                                             |
| 1        | 2        | 3        | 4        | 14.9 Adherence to Cracker Barrel product and plant service standards.                                                                                     |
| 1        | 2        | 3        | 4        | 14.10 Adherence to Cracker Barrel food quality and safety standards.                                                                                      |
| 1        | 2        | 3        | 4        | 14.11 Train and maintain proper procedures for plant check, exception reporting, service, comes, manager unknown, voice, and meal policies.               |
| 1        | 2        | 3        | 4        | 14.12 Use proper (minimum standards) levels of food waste in service to assure a smooth operation.                                                        |
| 1        | 2        | 3        | 4        | 14.13 Partner with management team to reduce shrinkage.                                                                                                   |
| 1        | 2        | 3        | 4        | 14.14 Reduce shrinkage through use of the "Effective Shrinkage Management" tool.                                                                          |
| 1        | 2        | 3        | 4        | 14.15 Ensure compliance to Retail Audit Procedures.                                                                                                       |
| 1        | 2        | 3        | 4        | 14.16 Follow Asset Protection Policy.                                                                                                                     |

Each Performance Measure and Behavior MUST have a rating to calculate the Objective Subtotal.  
If not, "NOT COMPLETE" will be displayed. Go back and review results.

| 1st Semi | 2nd Semi | 3rd Semi | 4th Semi | Objective 3 Total Subtotal:            |
|----------|----------|----------|----------|----------------------------------------|
| 1        | 2        | 3        | 4        | Performance Measurements: 10.20        |
| 1        | 2        | 3        | 4        | Performance Behaviors: 14.40           |
| 1        | 2        | 3        | 4        | Performance Measurements: NOT COMPLETE |
| 1        | 2        | 3        | 4        | Performance Behaviors: NOT COMPLETE    |

Cracker Barrel Old Country Store, Inc.  
FY 2003 Associate Manager Performance Evaluation

FY03 1st Semi-Annual Evaluation

Assoc. Manager Name: Dwight Rodgers  
Employee Number: 384932  
GM Name: Thomas K. Speziale  
General Mgr. Employee Number: 646425  
Store Number: 505

Objective 4: Exceed the Financial Plan

Performance Measurements:

|             |                                              |   |                                               |  |   |
|-------------|----------------------------------------------|---|-----------------------------------------------|--|---|
| 1st<br>Semi | 1: Role Model CS vs LTY (+30.01% or greater) | ▼ | 1A) Net Operating Income (OI) vs Last Year OI |  | ▼ |
| 2nd<br>Semi |                                              | ▼ |                                               |  | ▼ |
| 1st<br>Semi | 2: Role Model Metrics (+4.10% or greater)    | ▼ | 1B) Total Net Restaurant Sales Growth         |  | ▼ |
| 2nd<br>Semi |                                              | ▼ |                                               |  | ▼ |
| 1st<br>Semi | 2: Work Improvement (+3.99% to +4.10%)       | ▼ | 1C) Achieve Retail Sales vs Last Year         |  | ▼ |
| 2nd<br>Semi |                                              | ▼ |                                               |  | ▼ |

Each Performance Measure and Behavior MUST have a rating to calculate the Objective Subtotal. If not, "NOT COMPLETE" will be displayed. Go back and review results.

|                             |                                        |  |  |  |  |
|-----------------------------|----------------------------------------|--|--|--|--|
| Objective 4 Point Subtotal: |                                        |  |  |  |  |
| 1st<br>Semi                 | Performance Measurements: 21.28        |  |  |  |  |
| 2nd<br>Semi                 | Performance Behaviors: --              |  |  |  |  |
| 3rd<br>Semi                 | Performance Measurements: NOT COMPLETE |  |  |  |  |
| 4th<br>Semi                 | Performance Behaviors: --              |  |  |  |  |



Cracker Barrel Old Country Store, Inc.  
FY 2003 Associate Manager Performance Evaluation

FY03 1st Semi-Annual Evaluation  
Assoc. Manager Name: Dwight Rodgers  
Employee Number: 384639  
GM Name: Thomas K. Speziale  
GM Employee Number: 846425  
Store Number: 505  
Evaluation Date: 3/21/2003

Company Goal: "To Become the Best Restaurant Company in America"

FY 2003 Performance Summary

Note: Evaluations are completed semi-annually. It is important for all managers to receive "two" evaluations per year. The first column represents the "1st Semi Annual Evaluation" (fiscal periods 1-6) and the second column represents the "2nd Semi Annual Evaluation" (fiscal periods 7-12). Both scores are used to calculate the "Overall Performance Rating".

Each Objective Performance Measure and Behavior MUST have a rating to calculate an Overall Performance Rating. If not, "NOT COMPLETE" will be displayed.

|                                                       | 1st Semi-Annual Evaluation                      | 2nd Semi-Annual Evaluation | Annual |                                                                                                                             |
|-------------------------------------------------------|-------------------------------------------------|----------------------------|--------|-----------------------------------------------------------------------------------------------------------------------------|
| Objective 1: Achieve & maintain fully staffed stores. | Performance Measurements: 13.20                 | NOT COMPLETE               | 13.20  |                                                                                                                             |
|                                                       | Performance Behaviors: 32.80                    | NOT COMPLETE               | 32.80  |                                                                                                                             |
| Objective 2: Improve guest perceptions.               | Performance Measurements: 6.60                  | NOT COMPLETE               | 6.60   |                                                                                                                             |
|                                                       | Performance Behaviors: 30.00                    | NOT COMPLETE               | 30.00  |                                                                                                                             |
| Objective 3: Improve store margins.                   | Performance Measurements: 10.20                 | NOT COMPLETE               | 10.20  |                                                                                                                             |
|                                                       | Performance Behaviors: 14.40                    | NOT COMPLETE               | 14.40  |                                                                                                                             |
| Objective 4: Exceed the financial plan.               | Performance Measurements: 23.20                 | NOT COMPLETE               | 23.20  |                                                                                                                             |
|                                                       | Performance Behaviors: —                        | —                          | —      |                                                                                                                             |
|                                                       | Total Score Performance Measurements: 53.20     | N/A                        | 53.20  |                                                                                                                             |
|                                                       | Total Score Performance Behaviors: 77.20        | N/A                        | 77.20  |                                                                                                                             |
|                                                       | Overall Performance Rating: 3                   | N/A                        | 3      |                                                                                                                             |
|                                                       | Performance Improvement Form (PIF) Required: NO | N/A                        |        |                                                                                                                             |
|                                                       |                                                 |                            |        | <b>Rating Scale:</b><br>1 = 19.00 – 29.49<br>2 = 29.50 – 49.49<br>3 = 49.50 – 69.49<br>4 = 69.50 – 89.49<br>5 = 89.50 – 100 |
|                                                       |                                                 |                            |        | <b>2003 Overall Performance Rating:</b> 3                                                                                   |

Career Management and Tracking: Please complete the career development information.

| Current Recommendations (Check) |                                                       | Comments                                                   |
|---------------------------------|-------------------------------------------------------|------------------------------------------------------------|
| Career Development:             | Retains in current position for continued development | <input checked="" type="checkbox"/> (Add comments here)    |
|                                 | Developmental projects                                | <input type="checkbox"/> (Note position here)              |
|                                 | Promote                                               | <input type="checkbox"/> (Note position here)              |
|                                 | Willing to relocate                                   | <input type="checkbox"/> (Note any ideal areas here)       |
|                                 | Special interests                                     | <input type="checkbox"/> (Note any special interests here) |

Cracker Barrel Old Country Store, Inc.  
FY 2003 Associate Manager Performance Evaluation

FY03 1st Semi-Annual Evaluation  
Assoc. Manager Name: Dwight Rodgers  
Employee Number: 364639  
GM Name: Thomas K. Spziale  
GM Employee Number: 846425  
Store Number: 605  
Evaluation Date: 3/21/2003

FY 2003 Performance Comments and Signatures

1st Semi-Annual Evaluation

Identify which quarter the comments are referencing.

THE TEXTBOXES DO NOT EXPAND.

Should comments exceed what is displayed in the textbox on the screen, attach additional sheet.

Highlight Tag To:  
Cut: CTRL-X  
Copy: CTRL-C  
Paste: CTRL-V  
Enter: CTRL-Enter

1st Semi-Annual Evaluation (Insert comments here)

IMAGED

Employee Comments

Employee Comments may be hidden in this space.

IMAGED

Employee Signature:

Date: 3/28/03

Manager's Signature:

Date:

GM's Signature (if required):

Date:

Restaurant RVP Signature:

Date:

By signing this evaluation,

"I accept and understand Cracker Barrel's Equal Employment Opportunity policy, Anti-harassment policy, and Open Door policy; and that employee's may utilize the company's toll free number (1-888-446-0008) to report complaints or violations of these policies. I understand that the company may be held responsible for acts of harassment that I commit, condone, tolerate, or fail to investigate. I further understand that if I violate any aspect of these policies that I will be subject to immediate discipline, up to and including termination, and that I can be sued and may be held personally liable for my acts or omissions. Therefore, I acknowledge and confirm that I am not aware of any observed, alleged, experienced, or reported harassment, including discrimination or sexual harassment. I commit that I will report any such knowledge or awareness of possible violations of these policies to my immediate supervisor or the Employee Relations Department."

Employee Signature:

Date:

3/28/03

IMAGED

Cracker Barrel Old Country Store, Inc.  
FY 2003 Associate Manager Performance Evaluation

FY03 1st Semi-Annual Evaluation  
Assoc. Manager Name: Delight Rodgers  
Employee Number: 364839  
GM Name: Thomas K. Speziale  
GM Employee Number: 846425  
Store Number: 505  
Evaluation Date: 3/21/2003

FY 2003 Performance Comments and Signatures

2nd Semi-Annual Evaluation

Identify which quarter the comments are referencing.

THE TEXTBOXES DO NOT EXPAND.

Should comments exceed what is displayed in the textbox on the screen, attach additional sheet.

Highlight Text To:  
Cut: CTRL-X  
Copy: CTRL-C  
Paste: CTRL-V  
Enter: CTRL-Enter

2nd Semi-Annual Evaluation: (Insert comments here)

IMAGED

Employee Comments

Employee comments may be written in this space.

IMAGED

Employee Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Manager's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

GM's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Restaurant RVP Signature: \_\_\_\_\_

Date: \_\_\_\_\_

By signing this evaluation,

"I accept and understand Cracker Barrel's Equal Employment Opportunity policy, Anti-Harassment policy, and Open Door policy, and that employee's may utilize the company's toll free number (1-888-648-0000) to report complaints or violations of these policies. I understand that the company may be held responsible for acts of harassment that I commit, condone, tolerate, or fail to investigate. I further understand that if I violate any aspect of these policies that I will be subject to immediate discipline, up to and including termination, and that I can be sued and may be held personally liable for my acts or omissions. Therefore, I acknowledge and confirm that I am not aware of any observed, alleged, experienced, or reported harassment, including discrimination or sexual harassment. I commit that I will report any such knowledge or awareness of possible violations of these policies to my immediate supervisor or the Employee Relations Department."

Employee Signature \_\_\_\_\_

Date \_\_\_\_\_

Rodgers v. Cracker Barrel  
Def. Initial Disc. 0101

**Cracker Barrel Old Country Store, Inc.**  
**FY 2003 Associate Manager Performance Evaluation**

**FY03 1st Semi-Annual Evaluation**  
 Assoc. Manager Name: Dwight Rodgers  
 Employee Number: 384839  
 GM Name: Thomas K. Spaziale  
 GM Employee Number: 845425  
 Store Number: 505  
 Evaluation Date: 3/21/2003

**FY 2003 Individual Development Plan**

| Assignment                            | Resources Needed                      | Achievement                                       | Follow-Up Date   |
|---------------------------------------|---------------------------------------|---------------------------------------------------|------------------|
| 1st Semi-Annual Evaluation:           |                                       |                                                   |                  |
| Learn targeted food management system | Targeted food book, D47 bp seminar    | achieve food cost                                 | End of fiscal 03 |
| Organization                          | Day Timer                             | Complete quality of assignment as well as on time | End of fiscal 03 |
| Implement Focus Fifty                 | FF program                            | reduced shrink                                    | End of fiscal 03 |
| Reduction in guest complaints         | Guest service, staffing, table visits | 1 per month goal                                  | End of fiscal 03 |
| (Insert assignment here)              |                                       |                                                   |                  |
| (Insert assignment here)              |                                       |                                                   |                  |

| Assignment                  | Resources Needed | Achievement | Follow-Up Date |
|-----------------------------|------------------|-------------|----------------|
| 2nd Semi-Annual Evaluation: |                  |             |                |
| (Insert assignment here)    |                  |             |                |
| (Insert assignment here)    |                  |             |                |
| (Insert assignment here)    |                  |             |                |
| (Insert assignment here)    |                  |             |                |
| (Insert assignment here)    |                  |             |                |
| (Insert assignment here)    |                  |             |                |



IMAGED

Dwight has worked diligently in the opening of unit #505 Athens. He has learned the Cracker Barrel standards quickly and competently. The store opened fully staffed. The store also had very good financial results during the first months of operation. The opportunities for the store and for Dwight and the unit are as follows:

- Overtime needs to be reduced to .35%
  - Guest Complaints need to be at no more than one per month. Continue to maintain presence on the floor.
  - Learn the standards included in the Targeted Food Management Book (i.e. recipes, ideal knowledge, FCCC, etc.)
  - Implementation of focus fifty program.
  - Retail percent to total needs to improve.
  - We as a management team need to be more cohesive. We need to share opinions with each other. We need to assess overall performance of our actions and the staff. As a group we must have unified goals.
  - Insure that courses are nearing completion on the E-Learning computer.
  - Develop your own organization system (Day Timer)
  - Accurately enforce and all cash handling and audit procedures. Implement the Focus Fifty program.
  - Assist retail counterpart to drive sales and reduce shrink.
- Keep up the hard work
- IMAGED



IMAGED

Cracker Barrel Old Country Store, Inc.  
FY 2003 Associate Manager Performance Evaluation

FY03 1st Semi-Annual Evaluation  
Associate Manager Name: Dwight Rodgers  
Employee Number: 384838  
GM Name: Thomas K. Spedale  
GM Employee Number: 845425  
Store Number: 908  
Evaluation Date: 3/21/2003

FY 2003 Performance Comments and Signatures

2nd Semi-Annual Eval 2003

Identify which quarter the comments we refer to.

THE FORTYTHIRD QUARTER

Comments should be placed in the space below.

2nd Semi-Annual Evaluation (First 6 months term)

IMAGED

Employee Comments

Comments should be placed in this space.

IMAGED

Employee Signature

Date 3/28/03

Manager's Signature

Date 3-28-03

GM Signature

Date

Assistant GM Signature

Date

I accept and understand Cracker Barrel's Equal Employment Opportunity policy, Anti-harassment policy, and I agree to follow these policies. I understand that the company has a policy of zero tolerance for sexual harassment, including, but not limited to, sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. I further understand that if I violate any aspect of these policies, I will be subject to immediate discipline, up to and including termination, and that I can be sued and may be held personally liable for payment of damages. Therefore, I understand and agree that I am not aware of any other alleged, suspected, or reported harassment, including sexual harassment or sexual harassment, I consent that my only such knowledge or suspicion of possible violations of these policies is my immediate supervisor or the Human Resources Department.

Employee Signature

3/28/03

Confidential Document

FY03 Associate Manager Evaluation  
Reviewed/Marked: 3/28/03

PAGE 04

GEORGE KATSOUDAS

7705916723

IMAGED

**EXHIBIT 3**  
**TO ALEXANDER AFFIDAVIT**

-----Original Message-----

**From:** Alexander Rich 8015

**Sent:** Tuesday, March 22, 2005 8:00 PM

**To:** Phillips Ron 9802

**Subject:** 03-23-05 RE: Dwight Rodgers Concerns

Ron, once again, I come to you for advice in regards to my efforts to understand, support and correct behaviors of my general manager Dwight Rodgers. I had a mandatory meeting with the associate managers of #237 Gardendale this past Monday which I had pre-planned with Dwight as we both agreed that there was a lot of dissention among the management team and this dissention was obvious to the employees and was a distraction to our business needs. Following is a recap of this meeting with Tommie Patterson, Carolyn Freeman and Brian Harbin. Lisa Claburn did not attend as she is out on medical leave of absence.

I opened the meeting with asking for feedback as to what are the current issues at our Gardendale location. At this time I listened and took the following notes:

1. Lack of communication. Communication in passing. Manager meetings are not being held weekly and when held are not planned out well. No clear vision.
2. Managers are not on the same page. Lots of confusion.
3. Dwight not here a lot. A lot of issues of health and personal distractions.
4. Tommie asked to meet with Dwight and told Dwight that he questioned his commitment. Dwight immediately turned this to questioning Tommie's commitment and never asked Tommie any probing questions in regards to Tommie's initial request.
5. Dwight came out with a new checklist that he uses to evaluate managers. Never rolled out to managers in a meeting format and does not himself complete the checklist on shifts he is responsible for. Double standard.
6. Lack of courtesy for others. Carolyn was sick with the flu when she opened one day. Asked Dwight if she could leave instead of attending the managers meeting. Dwight required her to stay after her opening shift. Yet he has missed three shifts when he was sick.
7. Associates feel they are working more hours and putting in more effort than Dwight.
8. Brian, a fairly new associate, said he questions Dwight's passion for the job.
9. Two weeks ago, Dwight was off of Wednesday which is SBD. He came into the restaurant and was on the 1 hour conference call with Rich & Debbie and then stayed and did admin work for another 3 hours. The next day, Thursday, he called a shift leader in to cover his mid shift because he worked on his day off.
10. Many of occasions of asking other managers to cover his shifts and never offers to make up for their days off.
11. Never seeks opinions of his management team. His way only.
12. Very knowledgeable about CB policies and procedures. Great ideas and talks a good game. No follow up.

Ron, since this turned into a leadership issue, I asked the managers to independently rate Dwight on a scale of 1-10 with ten being high in the following categories:

|                 |              |               |                |
|-----------------|--------------|---------------|----------------|
| <u>Category</u> | <u>Brian</u> | <u>Tommie</u> | <u>Carolyn</u> |
|-----------------|--------------|---------------|----------------|

|                    |          |          |          |
|--------------------|----------|----------|----------|
| <b>Respect</b>     | <b>5</b> | <b>3</b> | <b>1</b> |
| <b>Work Ethic</b>  | <b>2</b> | <b>2</b> | <b>3</b> |
| <b>Credibility</b> | <b>3</b> | <b>2</b> | <b>1</b> |
| <b>Integrity</b>   | <b>2</b> | <b>1</b> | <b>1</b> |
| <b>Role Model</b>  | <b>2</b> | <b>2</b> | <b>1</b> |
| <b>Sets Vision</b> | <b>4</b> | <b>1</b> | <b>1</b> |
| <b>Compassion</b>  | <b>4</b> | <b>4</b> | <b>2</b> |
| <b>Passion</b>     | <b>4</b> | <b>2</b> | <b>3</b> |

Ron, another concern I have is that the managers are on a 6 day work week with Lisa out and Dwight at the home office for phase 2 of his new ETC training. He took Sunday off and his schedule shows him at the home office Monday through Thursday and returning to open on Friday. My understanding which I will confirm tomorrow is that the GMs are at the home office until Tuesday and the ETC stays through Thursday. Dwight called me twice yesterday to question how the meeting went and I twice confirmed that his next day back in the unit would be Friday and I would have a meeting with him then to discuss my findings. I am going to be very disappointed if in fact he is not at home office on Wednesday and Thursday and takes these days off when his managers are working 6 days. This of course would give him 3 days off this week.

George asked me to stay on the line today after the conference call as Dwight has been seeking George's advice. Dwight tells George that I take Tommie's side because I thought Tommie should have been chosen for the GM position. Ron, we never even considered Tommie for this position and I feel I have always been very objective when it comes to treating managers fairly and equally.

My concern is how to present these issues to Dwight as in the past he becomes very defensive and always tries to justify his position without taking any ownership for mistakes he might have made. If it is at all possible, I would like to have a third party at my meeting with Dwight this Friday when I discuss these issues. I know it is short notice, but any help is appreciated.

Thanks.

Rich Alexander

**EXHIBIT 4**  
**TO ALEXANDER AFFIDAVIT**



-----Original Message-----

**From:** Phillips Ron 9802

**Sent:** Monday, February 28, 2005 4:06 PM

**To:** Adkins Mike 394

**Subject:** 02-28-05 FW: Dwight Rogers

So you're in the loop... Rich had some concerns about two months ago regarding Dwight.

Rich and I sat down together with Dwight and worked through some attendance issues, accountability concerns, and his inability to build credibility.

I'll be talking with Rich to get more information... FYI

Ron

-----Original Message-----

**From:** Alexander Rich 8015

**Sent:** Tuesday, February 22, 2005 8:05 PM

**To:** Phillips Ron 9802

**Subject:** Dwight Rogers

Ron, I need to share with you some additional concerns that have surfaced with Dwight at Gardendale. I am definitely going to address these concerns with Dwight when he returns to work. However, I would appreciate any advise you could give me.

Dwight continues to not keep me informed of his schedule changes and is not always totally honest in my opinion when questioned even over minor items. Here are some of my recent concerns.

At the meeting you held for the new GMs & RMs, I gave Dwight a signed check for Jim 'N Nick's. As I was leaving on vacation, I asked Dwight to give me a voice mail as to the amount of the check. Never heard from Dwight for 7 days. Left him a voice mail reminding me that he was to leave me a message. He responded that he did leave me a voice mail and the amount was \$430.90. Ron, I am a voice mail addict and especially if anyone is leaving me a message in regards to my personal finances, I would not delete that message. I am concerned why he just can't say "Sorry, Rich here is the amount". Again an example that he is incapable of just admitting a mistake. This is something that to me would have been a very minor mistake.

I found out today that this past Sunday, Dwight was scheduled to close. He came in at 4pm and stayed until 4:45pm and said he was sick and left. The shift leader that had been there since 8am had to stay until 9pm. Dwight did not call me to inform me that he was sick and would miss his shift. He knows that GMs must leave me any schedule changes just as I do to you.

I did not know of this when I called Dwight Monday morning at 11am to check on the set up for the meeting you had today. He did not tell me while we were on the phone that he was sick the night before and didn't work his shift. While I was talking to him about the meeting set up, he stated that he had just heard that his aunt in South Carolina had died. I expressed my condolences and questioned whether he needed additional time off. I also asked him about the funeral arrangements and he replied that he didn't know. He responded that he would attend the funeral but it would not change

his schedule. I told him to call me Monday afternoon and we would continue to discuss the needs for your meeting on Tuesday.

Dwight didn't call me back. At 4pm I called the store and asked to speak to Dwight who was supposed to be closing. I was told that Tommie Patterson was the closing manager. I knew that Tommie had come in at 8am to work on schedules. Tommie said that Dwight asked him to close for him as his aunt had died. This is after Dwight had told me that his schedule would not be affected.

Ron, it is now 8pm Tuesday night. Dwight did not dial in on a conference call I had with the GMs at 10am this morning, has not once again informed me of his schedule changes and has not responded to other misc. voice mails.

Ron, I feel Dwight is very talented and capable of being the leader we need him to be, but I feel his is loosing credibility among the managers and staff due to his off-beam behaviors. I plan to meet with him on Sunday morning to discuss my concerns and would appreciate your advice.

Thanks.  
Rich A.

**EXHIBIT 5**  
**TO ALEXANDER AFFIDAVIT**

**Barnes Kelly 419**

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**From:** Tramel Kim 419  
**Sent:** Friday, June 03, 2005 10:58 AM  
**To:** Barnes Kelly 419  
**Subject:** FW: 05-15-05 FW: Mtg. with Dwight Rodgers

**Importance:** High

Please keep this with any other information pertaining to Dwight Rodgers and his performance issues. Ron and I spoke at length on Tuesday, May 31, 2005 concerning Dwight's desire to transfer to the new Montgomery unit as GM. I advised Ron that I was reluctant with this situation because Dwight currently is on a "2" for performance and has continued to have attendance and interpersonal issues within his unit. I had already shared these same concerns earlier in the day with Mike Adkins. He was planning to talk to Dwight about the ongoing issues with his performance and explore the potential for moving him from unit #237 to unit #574. I asked Ron to follow back up with me after they had their discussion but have heard nothing further from him on this matter.

-----Original Message-----

**From:** Phillips Ron 9802  
**Sent:** Sunday, May 15, 2005 5:13 PM  
**To:** Adkins Mike 394; Tramel Kim 419  
**Cc:** Alexander Rich 8015  
**Subject:** 05-15-05 FW: Mtg. with Dwight Rodgers

Kim and Mike,

Rich sent this to me Sunday PM; Rich and I talked early Sunday AM. This has been an ongoing problem with Dwight and has reduced his effectiveness in the unit - both in his in-store presence and his ability to command respect and support from his management staff (Note the voice mail I forwarded from Rich/Brian.)

I am very concerned of the direction Dwight is taking (not leading, but taking) the Gardendale unit. At the very least, my opinion is this MUST be a final written warning... but that will probably not solve Dwight's problems. He continues to refuse to accept any responsibility for his actions and how they impact the team. His failure to change can (and will) result in termination - not demotion... you can't teach work ethic....

As you can tell, I'm frustrated by Dwight's inability to connect the dots. I have sat down with Rich and Dwight months ago and he was "given the message" to LEAD the store.... Kim, what are your thoughts???

Ron

-----Original Message-----

**From:** Alexander Rich 8015  
**Sent:** Sunday, May 15, 2005 5:06 PM  
**To:** Phillips Ron 9802  
**Cc:** Alexander Rich 8015  
**Subject:** Mtg. with Dwight Rodgers

Ron, I met with Dwight Rodgers on Saturday morning May 14th at 6:00 am to discuss my concerns with two issues:  
 Hours worked for the week of May 7th through May 13th  
 His continuous lack of notifying me of changes in his schedule even after many conversations

The amount of time that he was out of his unit for the above mentioned week was brought to my attention via a voice mail from Brian Harbin one of his associate managers. I forwarded that message to you and you gave me advice as to how to address these issues with Dwight. As you are aware, this is not the first conversation I have had with Dwight as to either his work ethic and/or his leadership impact when he is in the unit.

Reviewing the Red Book and having statements from all the associate managers, here is a recap of Dwight's work week for the week ending May 13th in which he worked 34.25 hours. Again, this is in a unit that is negative in sales growth and missing food and labor goals.

**Saturday:** Scheduled to work 11a - 9p. He switched with Lisa Claburn (without notifying me) and then would be working 4p - close. Dwight was called by Carolyn Freeman around 11am to stop by the Pelham Cracker Barrel to pick up some food items. He did not arrive at the unit as scheduled at 4pm. He arrived at 5pm and at 6:45pm he informed Lisa and Tommie Patterson that he didn't realize that there were going to be three managers on duty and that he was leaving and would work the upcoming Thursday on his scheduled day off to eliminate 10 hours that were scheduled for a shift leader. Dwight did leave me a voice mail on Saturday that he was changing his schedule on Sunday (Mother's Day) and instead of working 4p - close he would be working 11a - 9pm.

**Sunday:** Dwight did not arrive at the unit until 12:45pm not as scheduled at 11am. Again, no call to me that he was going to be late. Dwight worked on Mother's Day from 12:45pm until 8pm. Tommie Patterson (SAM) was scheduled 1:30p to close and came in at 11am as he was both concerned about having only one associate and a shift leader on Mother's Day and he also expressed to me that he was not confident that his General Manager, Dwight, would be in at 11am. On Mother's Day, Tommie worked 11a - close (a 13 1/2 hr. day) and Dwight worked 7 1/4 hours.

**Monday:** Dwight was scheduled 11a - 9p and changed his schedule to 1:30 - close. Again, I received no message on this schedule change. He did complete this shift.

**Tuesday:** Tuesday was Employee Appreciation Day. Dwight worked 10a - 4pm.

**Wednesday:** This is the only day that Dwight actually worked what he was scheduled (1:30pm to close).

**Thursday:** This is the day that Dwight was supposed to work to make up for only working one hour and 45 minutes on Saturday. He notified the unit (not me) that he was sick and to go ahead and use shift leader Kevin for the 11a - 9pm shift.

**Friday:** This was also an original scheduled day off and Dwight made the decision to go ahead and take this day off even though he had Thursday off and only worked Saturday for one hour and 45 minutes.

On Saturday the 14th of May at 6:00am I met with Dwight and told him that I had two concerns that needed to be discussed. His hours worked at the unit for the week ending May 13th and his continuous failure to notify me of General Manager schedule changes which we had discussed on many prior conversations.

Dwight immediately spoke of working 60 hours the prior week. I told Dwight thanks for working 60 hours for the week ending May 6th, but I was here to address the issues that had promoted the need for this meeting. I spoke of Dwight changing his schedule 4 times in one week and that I was not informed except for the Sunday change in which he didn't work what he told me he would be (11a - 9pm). I also went through his work week and the fact that he only worked approximately 34.25 hours at a time that his unit is struggling in restaurant and retail sales growth and cost control management.

I asked Dwight if he felt I was holding him to a different standard than other GMs in the district and he replied "No, I know other GMs call in schedule changes". I then questioned him as to why he fails to call in necessary schedule changes. He replied "I informed the managers and just failed to call you". I spoke to the fact that as a District Manager it is my obligation to call Ron Phillips if I need to make a change to my schedule. I also asked him if his ETC for example was scheduled 9a - 5p on a Monday and did not come in due to a schedule change, would he address this with her an hourly employee. His answer was "yes". I then explained the importance of the GM position in our company and how as we all advance in leadership roles, our direct reports expect a very high standard in our delivery of role modeling the behaviors that expect from our subordinates.

I also told Dwight that I had the opportunity to meet with Laura Murchison our retail RVP when I was at the new unit opening for #574 Montgomery in Lebanon. Laura mentioned that she was going to stop by Gardendale on the way home. I asked Laura that if Dwight was there to question Dwight if there were any issues with my leadership that was of any concern to gain feedback in order to improve our working relationship. I informed Dwight that I met with Laura this past Friday (May 13th) at the new unit in Montgomery and questioned her as to any feedback she had to the conversation the both of you had at your unit. Laura responded that the only concern you had was you felt that I did not have trust in you at your current position. I then told Dwight that I appreciated his concern and his failure to inform me of schedule changes is an example of why I might not exhibit the level of trust that he is looking for.

Dwight then stated that he felt I micro managed his unit. I asked for examples and he stated that his managers call me with concerns/frustrations. I tried to explain to Dwight that he needs to ask himself why his direct reports are more comfortable calling me/leaving voice mail versus talking with him. I told him that his associates should feel more comfortable talking with him as they work together and are in contact with Dwight much more than they are with me. I expressed that I would question the openness of my relationship with my General Managers if they were calling Ron Phillips with concerns about myself as the leader in District 15.



Ron, at this time, I feel it is necessary to document Dwight on his failure to inform me of his schedule changes as this is a requirement of even District Managers. I have statements from all the associate managers as to Dwight's participation in the unit's operation this past week and their frustrations with his leadership at this unit.

Your advise as to how to proceed from this point is greatly appreciated.

Thanks.

Rich A. Alexander

**EXHIBIT 6**  
**TO ALEXANDER AFFIDAVIT**

## REMIT TO:

U-Haul

PO BOX 52128

Phoenix AZ 85072-2128

PH: 800-345-5876 OR 602-263-6611

HOURS: MON-FRI 8AM - 4PM MST

e-mail: Credit\_Administration@fc.uhaul.com



PAGE# 1 OF 1

## INVOICE NUMBER

2236124

## INVOICE DATE

25-JUL-05

## PURCHASE ORDER

DWIGHT ROGERS

## SALES ORDER

775068 09142819

## CUSTOMER NO

99067041

## BILL TO:

ATTN: SHERRIE ARTHUR  
CRACKER BARREL-OLD CNTRY  
121 MOVING CENTER COURT  
MADISON TN 37115

## INVOICE

INV. 2236124  
DESC Dwight Rogers

DATE 7-25AMT 219.82CODE 1.574.54110.6 2

BH Tm13

Please include customer and invoice numbers with your payment. Your business is appreciated.

70140

| TERMS                                | DUE DATE                                                         | SALESPERSON      | RENTED DATE | MILES ALLOWED   |
|--------------------------------------|------------------------------------------------------------------|------------------|-------------|-----------------|
| DUE UPON RECEIPT                     | 14-AUG-05                                                        | Keith Richardson | 22-JUL-05   | 128-1           |
| LINE#                                | ONEWAY OUT                                                       | QTY              | UNIT PRICE  | EXTD AMOUNT     |
| 1                                    | Easy Loading Mover 17' (EL2763G) Odom Out: 157331 Due: 23-JUL-05 | 1                | 106.240     | \$ 106.24       |
| 2                                    | Auto Transport                                                   | 1                | 59.000      | \$ 59.00        |
| 3                                    | Utility Dolly                                                    | 1                | 10.000      | \$ 10.00        |
| 4                                    | Furniture Pads, Regular                                          | 36               | 0.280       | \$ 10.00        |
| 5                                    | Rental Protection                                                | 1                | 28.000      | \$ 28.00        |
| 6                                    | Tax                                                              | 1                | 6.580       | \$ 6.58         |
| Location: VESTAVIA HILLS, AL         |                                                                  |                  |             | TOTAL: \$219.82 |
| Name: ROGERS DWIGHT - *SHERRY ARTHUR |                                                                  |                  |             |                 |

Dwight Rogers  
Pickup - Vestavia Hills, AL  
Dropoff - Montgomery, AL

AP

SEP 15 05

ENTERED  
SEP 16 2005

**EXHIBIT 7**  
**TO ALEXANDER AFFIDAVIT**

On 9-3-05 at 9 am I was witness to the termination of Dwight Rogers at CB Unit 574. Rich Alexander read the Counseling statement and Reasons for Termination to Dwight and then asked Dwight if he had any questions. Dwight stated that he did not. Rich then went on to let Dwight know he was being terminated. Dwight made no comments. He remained very calm and handed his keys to Rich. Rich asked if there were any personal items that Dwight needed to get - He stated "no". Rich asked Dwight for his discount Card and Dwight said it was in his car. Rich and I both shook hands with Dwight and walked him out. Dwight came back to the front door a couple minutes later and handed me his discount card. I thanked him and he left.

James J. Funk  
9-3-05



**EXHIBIT 8**  
**TO ALEXANDER AFFIDAVIT**

Store #: 237

Guest Relations Ticket # 410980Closed

Store #: 237

Mr Dwight Rodgers  
Store No: 237  
Job Class: GM

Phone:  
Evening:

Status: **Closed**  
Category: **Mgr Advisement - Discipline**

Assigned to: **Kelly Barnes**

Store #: **237 - Gardendale, AL (Gardendale, AL 35071)**

Incident Date:  
Manager Reported Date:  
Disposition:  
Resolution: **Counseling**  
Employee Name:  
Penalty Status: **No**

Origin: **1**  
Party Size: **0**  
Refund Amt: **0.00**  
Total Sale Amt: **0.00**

Questions and Answers

1. **Please describe the general nature of your call.**  
see action log

Involved Parties

|                                                                                                                                |                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| <b>Alexander, Rich (Store# 237)</b><br>Involved Type: Restaurant DM<br>Job Code: RSTDM<br>Hire Date:<br>Gender:<br>Ethnicity:  | <b>Jenkins, Debby (Store# 237)</b><br>Involved Type: Retail DM<br>Job Code: GSDM<br>Hire Date:<br>Gender:<br>Ethnicity:          |
| <b>Murchison, Laura (Store# 237)</b><br>Involved Type: Retail RVP<br>Job Code: VP<br>Hire Date:<br>Gender:<br>Ethnicity:       | <b>Patterson, Tommie (Store# 237)</b><br>Involved Type: Accused<br>Job Code: RTSAM<br>Hire Date:<br>Gender:<br>Ethnicity:        |
| <b>Phillips, Ron (Store# 237)</b><br>Involved Type: Restaurant RVP<br>Job Code: VP<br>Hire Date:<br>Gender:<br>Ethnicity:      | <b>Popee, Kay (Store# 237)</b><br>Involved Type: Retail Mgr<br>Job Code: GSMGR<br>Hire Date:<br>Gender:<br>Ethnicity:            |
| <b>Rodgers, Dwight (Store# 237)</b><br>Involved Type: Affected Party<br>Job Code: RSTGM<br>Hire Date:<br>Gender:<br>Ethnicity: | <b>Schmid, Penny (Store# 237)</b><br>Involved Type: Witness (Employee)<br>Job Code: WAIT4<br>Hire Date:<br>Gender:<br>Ethnicity: |

Action Log Records

**10/07/2005 11:55AM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**06/29/2005 04:55PM - ktamel**

Rodgers v. Cracker Barrel  
Def. Initial Disc. 0163

**Ticket Viewed:** This Ticket was reviewed.

**06/01/2005 09:22AM - kbarnes**

**Ticket Printed:** This Ticket Was Printed.

**06/01/2005 09:21AM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**06/01/2005 09:21AM - kbarnes**

**Ticket Emailed:** This Ticket Was Emailed To : ER\_Archive\_Ticket@CrackerBarrel.com .

**06/01/2005 09:21AM - kbarnes**

**Ticket Updated:** This Ticket Has Been Updated.

**06/01/2005 09:21AM - kbarnes**

**Call Received:** From Action Log of a duplicate ticket: 04/27/2005 04:36PM - kbarnes Call Received: While Dwight was at Home Office for Training, Rich Alexander held a manager's meeting with Dwight's team. Dwight is aware if this meeting. Rich had shared with me that Dwight has not worked the type of schedule expected of a General Manager and that he may have lost some important credibility with his management team early-on when he started at the store. (by working shorter shifts, not early, not late, etc.) Dwight has also had two or three deaths in the family since joining the unit, which on it's own would not be a problem, but he has taken extended time off for each of the incidents.... and has not been as flexible with his team of associate managers. Rich wants to see Dwight as a leader work with Tommie and earn his trust. Rich interviewed the Shift Leader while at the store...she overheard Tommie comment. His comment was insensitive and she did believe that he did not trust Dwight's notification of another funeral but it was not perceived as offensively as Dwight had presented. Rich decided to coach Tommie on his approach.

**06/01/2005 09:21AM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**06/01/2005 09:15AM - kbarnes**

**Ticket Printed:** This Ticket Was Printed.

**06/01/2005 09:15AM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**06/01/2005 09:14AM - kbarnes**

**Ticket Emailed:** This Ticket Was Emailed To : ER\_Archive\_Ticket@CrackerBarrel.com .

**06/01/2005 09:14AM - kbarnes**

**Ticket Status Changed:** The Status Of This Ticket Was Changed To Closed.

**06/01/2005 09:11AM - kbarnes**

**Reply Requested:** SUMMARY: Rich conducted a manager's meeting while Dwight was at Home Office. Dwight knows this meeting occurred. Expectations, positives and team concerns were discussed at the meeting then communicated with Dwight by Rich. Tommie's comment was said out of frustration that Dwight has been out of the unit so much and not reporting to the store as scheduled. Rich spoke with Tommie and advised him that such comments could be misinterpreted. Rich spoke with Dwight and explained that the comment was addressed but that it was not considered a racial slur.

**06/01/2005 09:10AM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**05/26/2005 09:39AM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

Rodgers v. Cracker Barrel  
Def. Initial Disc. 0164

**05/25/2005 05:14PM - kbarnes**

**Ticket Printed:** This Ticket Was Printed.

**05/25/2005 05:14PM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**05/16/2005 03:54PM - afsmith**

**Ticket Viewed:** This Ticket was reviewed.

**04/28/2005 02:09PM - kbarnes**

**Ticket Updated:** This Ticket Has Been Updated.

**04/28/2005 02:08PM - kbarnes**

**Call Attempt:** Called Dwight at the store. he is not in today

**04/28/2005 02:08PM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**04/27/2005 04:28PM - kbarnes**

**Ticket Updated:** This Ticket Has Been Updated.

**04/27/2005 04:27PM - kbarnes**

**Internal Correspondence:** CROSS REFERENCE TO TICKET # 409609

**04/27/2005 04:26PM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**04/25/2005 01:45PM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**03/28/2005 07:00AM - kbarnes**

**Ticket Printed:** This Ticket Was Printed.

**03/28/2005 07:00AM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**03/14/2005 04:09PM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**03/14/2005 11:35AM - kbarnes**

**Ticket Updated:** This Ticket Has Been Updated.

**03/14/2005 11:35AM - kbarnes**

**Call Attempt:** 678-595-5174 I called Dwayne on his cell phone Had to leave a message

**03/14/2005 11:34AM - kbarnes**

**Call Received:** Call from Dwayne cell phone 678-595-5174 please call

Rodgers v. Cracker Barrel

Def. Initial Disc. 0165

**03/14/2005 11:34AM - kbarnes**

**Call Made:** I called debbie and gave her fax number to home Office Employee relations

**03/14/2005 11:33AM - kbarnes**

**Call Received:** Debbie Jenkins called and requested my fax number Rick Aleander wants her to send the

statementst to em for our meeting this afternoon

**03/14/2005 11:13AM - kbarnes**

**Ticket Updated:** This Ticket Has Been Updated.

**03/14/2005 11:11AM - kbarnes**

**Call Received:** Rich, DM called Meet him at room 101 at 4 pm please to review stateme

**03/14/2005 09:35AM - kbarnes**

**Ticket Updated:** This Ticket Has Been Updated.

**03/14/2005 09:34AM - kbarnes**

**Call Attempt:** Sent voice mail to rich reminding him we need to meet to review statements

**03/14/2005 09:34AM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**03/14/2005 09:33AM - kbarnes**

**Ticket Status Changed:** The Status Of This Ticket Was Changed To Conclusion.

**03/14/2005 09:32AM - kbarnes**

**EMail Sent:** I sent an email to Rich, DM as follows: Wed 3/9/2005 3:36 PM Hey Rich, I understand you're traveling and may be at Home Office next week. Dwight is faxing me statements and I believe you have interviewed Penny (or at least gotten her statement). Let's discuss together next week while you're here. Thanks! Kelly Barnes  
Employee Relations Ext. 4166

**03/14/2005 09:31AM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**03/09/2005 04:22PM - bmcgee**

**Ticket Viewed:** This Ticket was reviewed.

**03/09/2005 03:38PM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**03/09/2005 03:38PM - kbarnes**

**Ticket Status Changed:** The Status Of This Ticket Was Changed To Pending.

**03/09/2005 03:33PM - kbarnes**

**Call Made:** 678-595-5174 cell ph if needed On 21st incident ocured. Dwight called a couple of days ago and the initial part of this actin log was from that original call. Dwight called his store and spoke with Asst Manager, Tommie Patterson and informed him of death in the family. He wouldn't be in due to funeral. Tommie hung up adn stated something like "I thought black people only had funerals on weekends." Offensive to shift leader and to GM who is African American. I advised GM to get statement from Penny and to make sure DM is in the loop to investigate. Dwight used to work for EEOC a good partner to have. Likes Cracker Barrel. He mentioned that Tommie, Sr Asst Mgr had wanted GM position when Dwight was hired and may have resentment but Dwight noted that he has watched/observed to see if Tommie is racist or just resentful that he didn't get the job. Penny Schmidt, Shift Leader statement with Penny Schmidt Rich, DM has copies of the statement. Rich spoke with Penny on March 8, 2005. Will interview Tommy. Rich is traveling til Monday March 14th. Meeting for all. may be delayed due to travel to Home Office. Rich Alexander, DM

**03/09/2005 02:32PM - kbarnes**

**Ticket Status Changed:** The Status Of This Ticket Was Changed To Open.

Rodgers v. Cracker Barrel  
Def. Initial Disc. 0166

Created 03/09/2005 03:38PM by Kelly Barnes

Source: CSR



Updated 06/01/2005 09:21AM by Kelly Barnes

No Letters have been created for this contact.

## CONFIDENTIAL CONCLUDING REPORT

**Reported Date:**

**Today's Date.:**

10/07/2005 11:55:59 AM

**Store # .....:**

237

**District #...:**

015

**Region #.....:**

02

**Investigator.:**

kbarnes

**Complaint type(s):**

Mgr Advisement - Discipline

**GRS Ticket#...:**

410980

**I. General Summary of Complaint.**

**II. Outline of the Investigative Process.**

**III. Summary of the Evidence or Explanation of Absence of Evidence.**

**IV. Review of the History of all Involved Parties/Store.**

**V. Determination.**

**VI. Explanation of Basis for Determination.**

**VII. Action(s) Taken with Regard to All Involved Parties.**

**Patterson, Tommie (Store# 237)**

Involved Type: Accused

Job Code: RTSAM

Hire Date:

Gender:

Ethnicity:

Rodgers v. Cracker Barrel  
Def. Initial Disc. 0167

**Schmid, Penny (Store# 237)**

Involved Type: Witness (Employee)

Job Code: WAIT4

Hire Date:

Gender:

Ethnicity:

\*\*\*\*\*ENDOFREPORT\*\*\*\*\*

Rodgers v. Cracker Barrel  
Def. Initial Disc. 0168



Store #: 237

Guest Relations Ticket # 409609

Store #: 237

**Manager Report 237****Dept No:****Job Class: NA****Phone:****Evening:****Status: Closed**  
**Category: Manager Report of Incident - Employee**Assigned to: **Kelly Barnes**

Store #: 237 - Gardendale, Al (Gardendale, Al 35071)

**Incident Date:**  
**Manager Reported Date:**  
**Disposition: Policy Violation Not Found**  
**Consent Order:**  
**Resolution: Counseling**  
**Employee Name:**  
**Penalty Status: No****Origin: Phone**  
**Party Size: 0**  
**Refund Amt: 0.00**  
**Total Sale Amt: 0.00****Questions and Answers****1. Manager's account of the incident.**

Received telephone call from Dwight Rodgers (GM) regarding a potential employee incident seeking advise as to how he should proceed. Rodgers stated that Penny Schmid (Shift Leader) came to him to let him know about a comment that Tommie Patterson (SAM) took a call from an hourly employee stating that the employee would not be in to work due to a funeral. When hanging up the telephone, Patterson made an inappropriate comment stating that -"he thought black people were only buried during the week, not on the weekend". This comment offended Schmid as she is married to an African American man.

**Involved Parties**

|                                                                                                                               |                                                                                                                                  |
|-------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| <b>Alexander, Rich (Store# 237)</b><br>Involved Type: Restaurant DM<br>Job Code: RSTDM<br>Hire Date:<br>Gender:<br>Ethnicity: | <b>Jenkins, Debby (Store# 237)</b><br>Involved Type: Retail DM<br>Job Code: GSDM<br>Hire Date:<br>Gender:<br>Ethnicity:          |
| <b>Murchison, Laura (Store# 237)</b><br>Involved Type: Retail RVP<br>Job Code: VP<br>Hire Date:<br>Gender:<br>Ethnicity:      | <b>Patterson, Tommie (Store# 237)</b><br>Involved Type: Accused<br>Job Code: RTSAM<br>Hire Date:<br>Gender:<br>Ethnicity:        |
| <b>Phillips, Ron (Store# 237)</b><br>Involved Type: Restaurant RVP<br>Job Code: VP<br>Hire Date:<br>Gender:<br>Ethnicity:     | <b>Popee, Kay (Store# 237)</b><br>Involved Type: Retail Mgr<br>Job Code: GSMGR<br>Hire Date:<br>Gender:<br>Ethnicity:            |
| <b>Rodgers, Dwight (Store# 237)</b><br>Involved Type: Restaurant GM<br>Job Code: RSTGM<br>Hire Date:<br>Gender:<br>Ethnicity: | <b>Schmid, Penny (Store# 237)</b><br>Involved Type: Witness (Employee)<br>Job Code: WAIT4<br>Hire Date:<br>Gender:<br>Ethnicity: |

**Action Log Records****06/27/2006 03:02PM - kbarnes****Ticket Viewed: Ticket Viewed****06/27/2006 03:02PM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**06/27/2006 02:48PM - ltthomps**

**Ticket Viewed:** This Ticket was reviewed.

**06/19/2006 12:43PM - kbarnes**

**Ticket Viewed:** Ticket Viewed

**06/19/2006 12:43PM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**12/12/2005 02:55PM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**12/12/2005 02:53PM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**11/10/2005 02:59PM - mmcbrien**

**Ticket Viewed:** This Ticket was reviewed.

**09/07/2005 03:39PM - vbarr**

**Ticket Viewed:** This Ticket was reviewed.

**09/07/2005 03:39PM - vbarr**

**Ticket Updated:** This Ticket Has Been Updated.

**09/07/2005 03:37PM - vbarr**

**Call Received:** Rodgers also stated that he felt that he was terminated for trying to do his job, but was told not to do his job when it pertained to a manager caught smoking in the unit. Rodgers also stated that Alexander advised that same manager with hints on how to keep his job even though he was smoking in the unit. Rodgers was advised that any additional correspondence regarding this matter needed to be discussed with Barnes and he again indicated that he would speak with her.

**09/07/2005 03:37PM - vbarr**

**Ticket Viewed:** This Ticket was reviewed.

**09/07/2005 03:35PM - vbarr**

**Ticket Viewed:** This Ticket was reviewed.

**09/07/2005 03:35PM - vbarr**

**Ticket Updated:** This Ticket Has Been Updated.

**09/07/2005 03:26PM - vbarr**

**Call Received:** 3:15 p.m. from Dwight Rodgers. Rodgers asked what the time frame was to submit statements regarding investigations and was told that it could vary definitely with 10 days is the goal, but a majority of the time statements are received next day and some during the same week. Rodgers advised that he had been terminated and thought it was ironic that this ticket was closed on 6/17/2005 and the documentation he had received regarding his termination also reflected dates from 6/17/2005. Rodgers stated that he had contacted the EEOC to ask questions, as he had a previous EEOC background. Rodgers stated that he strongly felt that he had been terminated for this incident because he inquired about the incident. Rodgers further stated that the only reason he inquired about the incident was because he had not received any notification stating that this case had been closed and he wanted to know about it because it involved him. Rodgers stated that he did not want to seem as though he was contacting Barr in order to obtain information regarding his case because he had been terminated. Barr advised Rodgers that he would need to speak with Barnes regarding this incident if he had further questions and advised that he could reach her at the 800 number at ext. 4166 if he needed to speak with her and he stated that he would contact her later.

**09/07/2005 03:26PM - vbarr**

**Ticket Viewed:** This Ticket was reviewed.

**09/07/2005 02:39PM - vbarr**

**Ticket Viewed:** This Ticket was reviewed.

**09/07/2005 02:39PM - vbarr**

**Ticket Updated:** This Ticket Has Been Updated.



**09/07/2005 02:38PM - vbarr**

**Internal Correspondence:** emailed ticket to Kelly Barnes so that she could see the most recent activity on this ticket and so she could follow-up with Rodgers if needed.

**09/07/2005 02:38PM - vbarr**

**Ticket Emailed:** This Ticket Was Emailed To kbarnes@crackerbarrel.com.

**09/07/2005 02:36PM - vbarr**

**Ticket Viewed:** This Ticket was reviewed.

**09/07/2005 02:36PM - vbarr**

**Ticket Updated:** This Ticket Has Been Updated.

**09/07/2005 02:31PM - vbarr**

**Call Received:** Call received Dwight Rodgers regarding the outcome of this case. The Guest Resource Team asked Rodgers if he could be called right back because each ticket would need to be viewed individually and he indicated that he could be reached at 678.595.5174. Reviewed the GRS database for tickets for #237 and found ticket number 409609 was the ticket Rodgers was calling about. Once contacted, Rodgers indicated that he had spoken with Rich Alexander, but had received no feedback from anyone regarding the outcome of this case. Rodgers was advised by Barr that the case was closed by Barnes on 6/17/05 and that no policy violation was found. Rodgers was advised that if he needed any additional information regarding this case, he would need to speak with Barnes directly. Rodgers was asked if he would like Barnes to call him back regarding this issue and he stated that he did not; however, he thought it was strange that he had not heard back from anyone regarding this matter.

**09/07/2005 02:28PM - vbarr**

**Ticket Viewed:** This Ticket was reviewed.

**09/07/2005 02:21PM - vbarr**

**Ticket Viewed:** This Ticket was reviewed.

**06/17/2005 11:23AM - kbarnes**

**Ticket Emailed:** This Ticket Was Emailed To : ER\_Archive\_Ticket@CrackerBarrel.com .

**06/17/2005 11:23AM - kbarnes**

**Ticket Status Changed:** The Status Of This Ticket Was Changed To Closed.

**06/17/2005 11:23AM - kbarnes**

**Reply Requested:** SUMMARY: While Dwight was at Home Office for Training, Rich Alexander held a manager's meeting with Dwight's team. Dwight is aware of this meeting. Rich had shared with me that Dwight has not worked the type of schedule expected of a General Manager and that he may have lost some important credibility with his management team early-on when he started at the store. (by working shorter shifts, not early, not late, etc.) Dwight has also had two or three deaths in the family since joining the unit, which on it's own would not be a problem, but he has taken extended time off for each of the incidents.... and has not been as flexible with his team of associate managers. Rich wants to see Dwight as a leader work with Tommie and earn his trust. Rich interviewed the Shift Leader while at the store...she overheard Tommie comment. His comment was insensitive and she did believe that he did not trust Dwight's notification of another funeral but it was not perceived as offensively as Dwight had presented. Rich decided to coach Tommie on his approach.

**06/17/2005 11:22AM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**06/17/2005 11:15AM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**06/09/2005 12:38PM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**06/01/2005 09:19AM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**05/25/2005 05:15PM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**04/27/2005 04:42PM - kbarnes**

**Ticket Updated:** This Ticket Has Been Updated.

**04/27/2005 04:41PM - kbarnes**

**Internal Correspondence:** I will contact Dwight tomorrow and Advise that he and Rich make a connection on this issue.

**04/27/2005 04:36PM - kbarnes**

**Call Received:** While Dwight was at Home Office for Training, Rich Alexander held a manager's meeting with Dwight's team. Dwight is aware of this meeting. Rich had shared with me that Dwight has not worked the type of schedule expected of a General Manager and that he may have lost some important credibility with his management team early-on when he started at the store. (by working shorter shifts, not early, not late, etc.) Dwight has also had two or three deaths in the family since joining the unit, which on its own would not be a problem, but he has taken extended time off for each of the incidents.... and has not been as flexible with his team of associate managers. Rich wants to see Dwight as a leader work with Tommie and earn his trust. Rich interviewed the Shift Leader while at the store...she overheard Tommie comment. His comment was insensitive and she did believe that he did not trust Dwight's notification of another funeral but it was not perceived as offensively as Dwight had presented. Rich decided to coach Tommie on his approach.

**04/27/2005 04:36PM - kbarnes**

**Call Made:** Called Von Barr to thank her for passing on Dwight's message requesting a call back.

**04/27/2005 04:31PM - kbarnes**

**Call Attempt:** Called Store and Dwight was gone for the day. I have now cross-referenced the two tickets related to this matter and will add the notes from Rich Alexander's store visit.

**04/27/2005 04:29PM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**04/27/2005 04:13PM - vbarr**

**Ticket Emailed:** This Ticket Was Emailed To kbarnes@crackerbarrel.com.

**04/27/2005 04:12PM - vbarr**

**Ticket Viewed:** This Ticket was reviewed.

**04/27/2005 04:12PM - vbarr**

**Ticket Updated:** This Ticket Has Been Updated.

**04/27/2005 04:11PM - vbarr**

**Reply Requested:** Kelly - Please call Dwight Rodgers at #237 regarding this incident. He stated that he should be at the store until 5:00 or later this evening. Thanks Von

**04/27/2005 04:10PM - vbarr**

**Call Received:** Call received from Rodgers stating that he had not had a return call about this incident. Rodgers asked if I could let Kelly know that he called so that she can call him back to advise as to how to proceed.

**04/27/2005 04:09PM - vbarr**

**Ticket Viewed:** This Ticket was reviewed.

**04/25/2005 01:45PM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**04/06/2005 03:57PM - kbarnes**

**Ticket Updated:** This Ticket Has Been Updated.

**04/06/2005 03:56PM - kbarnes**

**Call Received:** From Rich Alexander received today.. He will provide further clarification.

**04/06/2005 03:56PM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**03/30/2005 12:30PM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**03/18/2005 09:39AM - kbarnes**

**Ticket Updated:** This Ticket Has Been Updated.

**03/18/2005 09:37AM - kbarnes**

**Internal Correspondence:** DM, Rich Alexander and I reviewed statements sent by GM. Rich has been in training here at home office all week. Rich will meet with tommie early next week to discuss and will provide me with an update.

**03/18/2005 09:37AM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**03/08/2005 09:02AM - kbarnes**

**Ticket Updated:** This Ticket Has Been Updated.

**03/08/2005 09:01AM - kbarnes**

**Call Attempt:** Left a voice mail for Dwight, GM asking if he has obtained statements and gave him my fax # again.

**03/08/2005 09:00AM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**03/07/2005 11:59AM - kbarnes**

**Ticket Status Changed:** The Status Of This Ticket Was Changed To Conclusion.

**03/07/2005 11:58AM - kbarnes**

**Call Received:** I spoke with the manager who will obtain statements and fax them to Employee Relations. (we spoke on Friday, March 4, 2005).

**03/07/2005 11:57AM - kbarnes**

**Ticket Viewed:** This Ticket was reviewed.

**03/04/2005 04:02PM - vbarr**

**Ticket Emailed:** This Ticket Was Emailed To kbarnes@crackerbarrel.com.

**03/04/2005 04:00PM - vbarr**

**Ticket Viewed:** This Ticket was reviewed.

**03/04/2005 03:58PM - vbarr**

**Internal Correspondence:** This ticket is being reassigned to Kelly Barnes. Rodgers has been advised to begin and ODR investigation and instructed to speak with Barnes for further direction as to how he should proceed. Rodgers called back and asked if he could speak with Barnes and was transferred to Barnes. Barr also let Barnes know that the ticket was also forthcoming.

**03/04/2005 03:43PM - vbarr**

**Ticket Status Changed:** The Status Of This Ticket Was Changed To Open.

Created&NBSP;03/04/2005 04:00 PM by Von Barr  
Updated 09/07/2005 03:39 PM by Von Barr

Source: CSR

No Letters have been created for this contact.

## CONFIDENTIAL CONCLUDING REPORT

**Reported Date:**

**Incident Date.:**

**Today's Date.:**

**Store # .....:**

**District #...:**

**Region #.....:**

**Investigator.:**

**Complaint type(s):**

06/04/2007 09:27:59 AM

237

015

10

kbarnes

Manager Report of Incident - Employee

**Nature(s) of Complaint:**

**Consent Order Violation(s):**

**GRS Ticket#...:**

409609

**I. General Summary of Complaint.**

**II. Outline of the Investigative Process.**

**III. Summary of the Evidence or Explanation of Absence of Evidence.**

**IV. Review of the Accused's Employment/Training History**

**V. Review of the Store History**

**VI. Determination.**

Policy Violation Not Found

**VII. Explanation of Basis for Determination.**

**VIII. Other Issues Arising from Investigation.**

**IX. Action(s) Taken with Regard to All Involved Parties.**

**Patterson, Tommie (Store# 237)**

Involved Type: Accused

Job Code: RTSAM

Hire Date:

Gender:

Ethnicity:

**Schmid, Penny (Store# 237)**

Involved Type: Witness (Employee)

Job Code: WAIT4

Hire Date:

Gender:

Ethnicity:

\*\*\*\*\*ENDOFREPORT\*\*\*\*\*

**DFT CRACKER BARREL'S  
EX. B  
TO EVIDENTIARY SUBMISSION**



**FREEDOM COURT REPORTING**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES DISTRICT COURT<br/> 2 MIDDLE DISTRICT OF ALABAMA<br/> 3 NORTHERN DIVISION<br/> 4<br/> 5 CASE NUMBER:<br/> 6 DWIGHT N. RODGERS,<br/> 7 Plaintiff,<br/> 8 vs.<br/> 9 CRACKER BARREL OLD<br/> 10 COUNTRY STORE, INC.,<br/> 11 Defendants.<br/> 12<br/> 13 STIPULATION<br/> 14 IT IS STIPULATED AND AGREED by<br/> 15 and between the parties through their<br/> 16 respective counsel that the deposition of<br/> 17 DWIGHT N. RODGERS may be taken before<br/> 18 Tanya D. Cornelius, Certified Shorthand<br/> 19 Reporter and Notary Public, at the law<br/> 20 offices of Burr &amp; Forman, LLP, Suite 3100<br/> 21 Wachovia Tower, 420 20th Street North,<br/> 22 Birmingham, Alabama, on the 13th day of<br/> 23 June 2007.</p>                                                                                                                                                                   | <p style="text-align: right;">Page 3</p> <p>1 INDEX<br/> 2 EXAMINATION BY: PAGE NUMBER:<br/> 3 Ms. Busby 8<br/> 4 Ms. York 419<br/> 5 Ms. Busby 424<br/> 6<br/> 7 EXHIBITS<br/> 8 DEFENDANT'S EXHIBIT NO.: PAGE NUMBER:<br/> 9 1 - Resume 52<br/> 10 2 - 1/28/05 Evaluation 136<br/> 11 3 - Action Plan 161<br/> 12 4 - 3/30/05 Letter to 161<br/> 13 Rich Alexander<br/> 14 5 - EEOC Charge of Discrimination 223<br/> 15 6 - Employee Counseling Report 281<br/> 16 7 - 7/24/05 E-mail 285<br/> 17 Guest Relations Issue<br/> 18 8 - Employee Counseling Report 295<br/> 19 9 - Handwritten notes 326<br/> 20 10 - Charge Questionnaire 329<br/> 21 11 - Dismissal and Notice of 339<br/> 22 Rights<br/> 23</p> |
| <p style="text-align: right;">Page 2</p> <p>1 IT IS FURTHER STIPULATED AND<br/> 2 AGREED that the signature to and the<br/> 3 reading of the deposition by the witness<br/> 4 is waived, the deposition to have the<br/> 5 same force and effect as if full<br/> 6 compliance had been had with all laws and<br/> 7 rules of Court relating to the taking of<br/> 8 depositions.<br/> 9 IT IS FURTHER STIPULATED AND<br/> 10 AGREED that it shall not be necessary for<br/> 11 any objections to be made by counsel to<br/> 12 any questions, except as to form or<br/> 13 leading questions, and that counsel for<br/> 14 the parties may make objections and<br/> 15 assign grounds at the time of the trial,<br/> 16 or at the time said deposition is offered<br/> 17 in evidence, or prior thereto.<br/> 18 IT IS FURTHER STIPULATED AND<br/> 19 AGREED that notice of filing of the<br/> 20 deposition by the Commissioner is waived.<br/> 21<br/> 22<br/> 23</p> | <p style="text-align: right;">Page 4</p> <p>1 EXHIBITS CONTINUED: PAGE NUMBER:<br/> 2 12 - Plaintiff's Initial 345<br/> 3 Disclosures<br/> 4 13 - 6/17/05 Rich Letter to 361<br/> 5 Rodgers<br/> 6 14 - Rodgers Letter to Phillips 363<br/> 7 15 - 8/6/05 Rich Memo to Rodgers 366<br/> 8<br/> 9<br/> 10<br/> 11<br/> 12<br/> 13<br/> 14<br/> 15<br/> 16<br/> 17<br/> 18<br/> 19<br/> 20<br/> 21<br/> 22<br/> 23</p>                                                                                                                                                                                                                                                                                              |

1 (Pages 1 to 4)

**FREEDOM COURT REPORTING**

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|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 5</p> <p>1           A P P E A R A N C E S</p> <p>2</p> <p>3   FOR THE PLAINTIFF:</p> <p>4       BREEDLOVE &amp; LASSITER</p> <p>5       BY: Monica A. York, Esquire</p> <p>6           Lee Breedlove, Esquire</p> <p>7       250 East Ponce de Leon Avenue</p> <p>8       Suite 425</p> <p>9       Decatur, Georgia 30030</p> <p>10</p> <p>11   FOR THE DEFENDANT:</p> <p>12       BURR &amp; FORMAN, LLP</p> <p>13       BY: Jennifer Busby, Esquire</p> <p>14           Ashley Hattaway, Esquire</p> <p>15       Suite 3100 Wachovia Tower</p> <p>16       420 20th Street North</p> <p>17       Birmingham, Alabama 35203</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>                                                                                                                                  | <p style="text-align: right;">Page 7</p> <p>1           MS. BUSBY: Mr. Breedlove is</p> <p>2       here. He is lawyer for Mr. Rodgers.</p> <p>3       He's not admitted in this case for</p> <p>4       Alabama, but we have verified through</p> <p>5       Byron Perkins that he has given his</p> <p>6       permission because he believes he is</p> <p>7       allowed under the Alabama Rules to sit in</p> <p>8       on the deposition. I don't know if he's</p> <p>9       allowed or not. I don't think he's</p> <p>10      supposed to practice law in Alabama</p> <p>11      without being admitted, but as long as</p> <p>12      his admitting attorney believes he's</p> <p>13      allowed to sit in, we're going to</p> <p>14      proceed. Fair enough?</p> <p>15           MS. YORK: Uh-huh (positive</p> <p>16      response).</p> <p>17           MS. BUSBY: Okay.</p> <p>18</p> <p>19           DWIGHT RODGERS,</p> <p>20      being first duly sworn, was examined</p> <p>21      and testified as follows:</p> <p>22</p> <p>23           THE REPORTER: Will this be</p> |
| <p style="text-align: right;">Page 6</p> <p>1           I, Tanya D. Cornelius,</p> <p>2       Certified Shorthand Reporter and Notary</p> <p>3       Public, acting as Commissioner, certify</p> <p>4       that on this date, as provided by the</p> <p>5       Federal Rules of Civil Procedure, and the</p> <p>6       foregoing stipulation of counsel, there</p> <p>7       came before me at the law offices of Burr</p> <p>8       &amp; Forman, LLP, Suite 3100 Wachovia Tower,</p> <p>9       420 20th Street North, Birmingham,</p> <p>10      Alabama, beginning at 9:30 a.m., DWIGHT</p> <p>11      N. RODGERS, witness in the above cause,</p> <p>12      for oral examination, whereupon the</p> <p>13      following proceedings were had:</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> | <p style="text-align: right;">Page 8</p> <p>1      usual stipulations?</p> <p>2           MS. BUSBY: Yes.</p> <p>3           MS. YORK: Yes.</p> <p>4</p> <p>5           EXAMINATION</p> <p>6      BY MS. BUSBY:</p> <p>7           Q.   Mr. Rodgers, I'm Ginger</p> <p>8      Busby. I represent the Cracker Barrel,</p> <p>9      and we're here to take your deposition</p> <p>10     today. Have you ever had a deposition</p> <p>11     taken?</p> <p>12           A.   No.</p> <p>13           Q.   If you need a break or don't</p> <p>14     understand the question, just let me</p> <p>15     know. That's the first two rules. The</p> <p>16     third rule is the most important. You</p> <p>17     have to answer out loud. You and I will</p> <p>18     start to talking and I probably will</p> <p>19     shake my head at you which might make you</p> <p>20     shake your head back. Try to remember to</p> <p>21     say yes. And if I point at you or nod my</p> <p>22     head, that means you have to answer</p> <p>23     verbally, and that's why I'm doing it,</p>      |

2 (Pages 5 to 8)

# FREEDOM COURT REPORTING

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 9</p> <p>1 because I have understood that you have<br/> 2 responded to me, but I have to make sure<br/> 3 for the record that the court reporter<br/> 4 gets to take down a verbal answer. So if<br/> 5 that occurs, that's why that would<br/> 6 occur. So just try to remember that.<br/> 7 A. Okay.<br/> 8 Q. Tell me your full name.<br/> 9 A. Dwight Norman Rodgers, Sr.<br/> 10 Q. And what is your current<br/> 11 address?<br/> 12 A. [REDACTED], and that's<br/> 13 Stone Mountain, Georgia 30088.<br/> 14 Q. What's your birth date?<br/> 15 A. [REDACTED]/66.<br/> 16 Q. What's your Social Security<br/> 17 number?<br/> 18 A. [REDACTED].<br/> 19 Q. Where did you grow up?<br/> 20 A. Norfolk, Virginia.<br/> 21 Q. I know you went to high<br/> 22 school in Virginia; is that right?<br/> 23 A. Yes.</p> | <p style="text-align: right;">Page 11</p> <p>1 Q. All right. Where did you<br/> 2 go? Where did they assign you?<br/> 3 A. I was assigned to Europe, and<br/> 4 as well as Maryland. And for like basic<br/> 5 training and my international training, I<br/> 6 went to Kentucky and Indiana.<br/> 7 Q. Okay. So what year was this?<br/> 8 '86 about, '87?<br/> 9 A. No, I went in '85.<br/> 10 Q. So how long were you -- are<br/> 11 you still in the military?<br/> 12 A. No. I got out in '91.<br/> 13 Q. All right. So from '85 to<br/> 14 '91, you're in the military?<br/> 15 A. Yes.<br/> 16 Q. All right. During that time<br/> 17 where all are you stationed?<br/> 18 A. The vast majority I was<br/> 19 stationed in Mannheim, Germany, and after<br/> 20 Mannheim I went to Hagerstown, Maryland,<br/> 21 Fort Ritchie.<br/> 22 Q. And why did you get out?<br/> 23 A. At the time I had a son, and</p>                                                               |
| <p style="text-align: right;">Page 10</p> <p>1 Q. What year did you graduate?<br/> 2 A. '85.<br/> 3 Q. And then what did you do<br/> 4 after high school?<br/> 5 A. I attended Commonwealth<br/> 6 College, and I left Commonwealth College<br/> 7 and joined the military.<br/> 8 Q. Commonwealth College is<br/> 9 located where?<br/> 10 A. Virginia, Norfolk, Virginia.<br/> 11 Q. How long did you go there?<br/> 12 A. Right at a year.<br/> 13 Q. Okay. And you joined the<br/> 14 military in what regard?<br/> 15 A. I don't understand the<br/> 16 question.<br/> 17 Q. I mean, did you just join as<br/> 18 an enlisted?<br/> 19 A. Yes, as an enlisted.<br/> 20 Q. Sometimes people leave from a<br/> 21 college, and I didn't know which one you<br/> 22 did. You just enlisted, correct?<br/> 23 A. Yes.</p>                                  | <p style="text-align: right;">Page 12</p> <p>1 it was just being out of the country, my<br/> 2 wife at that time and I were just having<br/> 3 a lot of marital problems, and it just<br/> 4 was more feasible for me to get out.<br/> 5 Q. And I'll ask you about that<br/> 6 in a minute. Let me ask a better<br/> 7 question. I mean, was your time up? I<br/> 8 mean, did you have to ask to be<br/> 9 discharged or, you know, sometimes when<br/> 10 people enlist, they enlist just for a<br/> 11 certain number of years. I mean, how did<br/> 12 you go about getting out of the Army?<br/> 13 A. Yes. It was upon request.<br/> 14 Q. Upon request. And to the<br/> 15 best of your recollection that was in<br/> 16 1991?<br/> 17 A. To the best of my<br/> 18 recollection, yes.<br/> 19 Q. Okay. You said military. I<br/> 20 said Army. Which armed forces?<br/> 21 A. Army.<br/> 22 Q. Okay. All right. You said<br/> 23 your wife at the time. So you have been</p> |

3 (Pages 9 to 12)

## FREEDOM COURT REPORTING

| Page 13                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 15                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| <p>1 married before?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. What is her name?</p> <p>4 A. Katherine.</p> <p>5 Q. With a C or a K?</p> <p>6 A. K.</p> <p>7 Q. Katherine. What's her maiden</p> <p>8 name?</p> <p>9 A. Longshore, L-o-n-g-s-h-o-r-e.</p> <p>10 Q. And how long were you married</p> <p>11 to Ms. Longshore?</p> <p>12 A. Five years.</p> <p>13 Q. Okay. Where does she live?</p> <p>14 A. I know she resides in</p> <p>15 Virginia.</p> <p>16 Q. Okay. Now, you had children</p> <p>17 with her?</p> <p>18 A. Yes.</p> <p>19 Q. And what are their names?</p> <p>20 A. Just one.</p> <p>21 Q. Okay.</p> <p>22 A. His name is Dwight.</p> <p>23 Q. And how old is Dwight?</p>             | <p>1 Q. Okay. Where does she live?</p> <p>2 A. She's in Korea. I don't know</p> <p>3 exactly where.</p> <p>4 Q. Well, has she --</p> <p>5 A. She's currently in the</p> <p>6 military.</p> <p>7 Q. Okay. I was going to say,</p> <p>8 now that is an interesting way of being</p> <p>9 married. She's an American and you met</p> <p>10 her here and were married to her here?</p> <p>11 A. Yes.</p> <p>12 Q. Did you meet her in the</p> <p>13 military?</p> <p>14 A. Yes.</p> <p>15 Q. And did she live with you in</p> <p>16 Alabama, as an example?</p> <p>17 A. No.</p> <p>18 Q. Did she live with you in</p> <p>19 Georgia?</p> <p>20 A. In Georgia, yes.</p> <p>21 Q. Okay. So when you moved to</p> <p>22 Alabama, she never moved here with you?</p> <p>23 A. That's correct.</p> |
| Page 14                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 16                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>1 A. He's eighteen now.</p> <p>2 Q. Does he live outside the</p> <p>3 state of Alabama?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Now, have you been in</p> <p>6 any other marriages?</p> <p>7 A. Yes.</p> <p>8 Q. All right. Are you currently</p> <p>9 married?</p> <p>10 A. No.</p> <p>11 Q. All right. Who did you marry</p> <p>12 after Ms. Longshore?</p> <p>13 A. Lizzie, L-i-z-z-i-e, Barnes,</p> <p>14 B-a-r-n-e-s.</p> <p>15 Q. And when did you marry Ms.</p> <p>16 Barnes?</p> <p>17 A. August of '91.</p> <p>18 Q. How long were you married to</p> <p>19 Ms. Barnes?</p> <p>20 A. Twelve years.</p> <p>21 Q. Okay. So sometime in '03 you</p> <p>22 were divorced?</p> <p>23 A. Yes.</p> | <p>1 Q. Okay. Did you have any</p> <p>2 children with her?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. How many?</p> <p>5 A. One.</p> <p>6 Q. All right. What's the -- is</p> <p>7 it a girl or a boy?</p> <p>8 A. Boy.</p> <p>9 Q. What's his name?</p> <p>10 A. Arlando.</p> <p>11 Q. A-r-l-a-n-d-o?</p> <p>12 A. Yes.</p> <p>13 Q. And how old is he?</p> <p>14 A. Twenty-one.</p> <p>15 Q. And where does he live?</p> <p>16 A. He's in the military as well</p> <p>17 and he's in Germany.</p> <p>18 Q. Okay. Any other marriages?</p> <p>19 A. No.</p> <p>20 Q. Any other children?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Who are they?</p> <p>23 A. His name is Dwight as well.</p>                                                                                                           |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 17</p> <p>1 <b>Q. Okay.</b></p> <p>2 A. He resides in North Carolina.</p> <p>3 <b>Q. How old is he?</b></p> <p>4 A. Dwight will be twenty-six.</p> <p>5 <b>Q. All right. Do you have any</b></p> <p>6 <b>relatives in the state of Alabama?</b></p> <p>7 A. No.</p> <p>8 <b>Q. All right. You grew up in</b></p> <p>9 <b>Virginia. You went in the military. You</b></p> <p>10 <b>came out of the military in approximately</b></p> <p>11 <b>'91, and then what did you do?</b></p> <p>12 A. I moved from Europe to</p> <p>13 Arizona, and I worked as a civilian.</p> <p>14 <b>Q. What was your first job as a</b></p> <p>15 <b>civilian after coming out of the</b></p> <p>16 <b>military?</b></p> <p>17 A. I was customer service</p> <p>18 manager.</p> <p>19 <b>Q. For what company?</b></p> <p>20 A. It's called Maxx Club,</p> <p>21 M-a-x-x Club.</p> <p>22 <b>Q. What type of --</b></p> <p>23 A. It's a version of Sam's Club.</p>                                                            | <p style="text-align: right;">Page 19</p> <p>1 <b>a year, two years?</b></p> <p>2 A. Approximately right about two</p> <p>3 years.</p> <p>4 <b>Q. And why did you leave?</b></p> <p>5 A. Relocated with military</p> <p>6 spouse.</p> <p>7 <b>Q. That would be Ms. Barnes?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. Okay. All right. Where did</b></p> <p>10 <b>you relocate to?</b></p> <p>11 A. We moved to Athens, Georgia.</p> <p>12 <b>Q. All right. Now, before I get</b></p> <p>13 <b>to that, let me make sure I'm clear on</b></p> <p>14 <b>this. You get out of the military. At</b></p> <p>15 <b>the time you get out, you're married to</b></p> <p>16 <b>Ms. Longshore who has stayed in Virginia</b></p> <p>17 <b>the whole time, I take it?</b></p> <p>18 A. Yes. When I initially got</p> <p>19 out of the military.</p> <p>20 <b>Q. Right. She didn't travel</b></p> <p>21 <b>with you to Europe and all those places?</b></p> <p>22 A. She did travel to Europe for</p> <p>23 six months.</p> |
| <p style="text-align: right;">Page 18</p> <p>1 <b>Q. Okay. So as the customer</b></p> <p>2 <b>service manager, tell me what that</b></p> <p>3 <b>involved.</b></p> <p>4 A. I managed the -- what they</p> <p>5 call front line which is the cashier's</p> <p>6 line as well as electronics department,</p> <p>7 as well as scheduling and maintaining the</p> <p>8 records and finances for the front end of</p> <p>9 the business.</p> <p>10 <b>Q. So when you say front end,</b></p> <p>11 <b>you mean the cashiers and the electronics</b></p> <p>12 <b>department?</b></p> <p>13 A. Yes, as well as the customer</p> <p>14 service counter.</p> <p>15 <b>Q. Okay. And the same thing for</b></p> <p>16 <b>scheduling? It will be customer service,</b></p> <p>17 <b>counter, cashiers, and the electronics</b></p> <p>18 <b>department?</b></p> <p>19 A. Correct.</p> <p>20 <b>Q. And how long were you with</b></p> <p>21 <b>Maxx Club?</b></p> <p>22 A. I don't recall the time.</p> <p>23 <b>Q. Just approximately? I mean,</b></p> | <p style="text-align: right;">Page 20</p> <p>1 <b>Q. Okay.</b></p> <p>2 A. She was in Europe for six</p> <p>3 months, yes.</p> <p>4 <b>Q. But then came home to</b></p> <p>5 <b>Virginia?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. And she is the one that you</b></p> <p>8 <b>had Dwight who is eighteen with?</b></p> <p>9 A. That's correct.</p> <p>10 <b>Q. Okay. Shortly after you got</b></p> <p>11 <b>back, I take it you got divorced and</b></p> <p>12 <b>married Ms. Barnes?</b></p> <p>13 A. That's correct.</p> <p>14 <b>Q. All right. Ms. Barnes -- did</b></p> <p>15 <b>y'all go to Arizona because that's where</b></p> <p>16 <b>she was stationed or how did you make it</b></p> <p>17 <b>to Arizona?</b></p> <p>18 A. That's correct.</p> <p>19 <b>Q. Okay. So then she gets</b></p> <p>20 <b>transferred to Georgia?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. And you moved to -- and</b></p> <p>23 <b>that's how you show up in Athens,</b></p>                                                |

5 (Pages 17 to 20)



## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 21</p> <p>1 <b>Georgia?</b></p> <p>2 A. That's correct.</p> <p>3 <b>Q. And we are approximately in</b></p> <p>4 <b>1993 as best you can recall?</b></p> <p>5 A. Around about '93, yes.</p> <p>6 <b>Q. We'll figure it out</b></p> <p>7 <b>eventually later. Sometimes dates come</b></p> <p>8 <b>back to you when you kind of follow your</b></p> <p>9 <b>timeline. But approximately '93. So you</b></p> <p>10 <b>leave Maxx Club, transfer to Athens, and</b></p> <p>11 <b>where did you go to work?</b></p> <p>12 A. I was with the Athens</p> <p>13 Banner-Herald, the local newspaper.</p> <p>14 <b>Q. Is that a newspaper?</b></p> <p>15 A. Uh-huh (positive response).</p> <p>16 <b>Q. And what did you do for them?</b></p> <p>17 A. District manager.</p> <p>18 <b>Q. Tell me what a district</b></p> <p>19 <b>manager for the newspaper does. And the</b></p> <p>20 <b>reason I ask that, you know, the district</b></p> <p>21 <b>would be -- I mean, wouldn't it just be</b></p> <p>22 <b>Athens, or I mean, I don't know.</b></p> <p>23 A. No, it's not. It's actually,</p> | <p style="text-align: right;">Page 23</p> <p>1 it's a merchandising company.</p> <p>2 <b>Q. Where are they located?</b></p> <p>3 A. At the time they were out of</p> <p>4 Sarasota, Florida.</p> <p>5 <b>Q. Well, wait a minute. Did you</b></p> <p>6 <b>move to Florida?</b></p> <p>7 A. No.</p> <p>8 <b>Q. You were working in Athens?</b></p> <p>9 A. That's just where the home</p> <p>10 office was.</p> <p>11 <b>Q. Okay. Well, tell me what you</b></p> <p>12 <b>did for them.</b></p> <p>13 A. I was -- they called it the</p> <p>14 coastal director. It was where I did</p> <p>15 quality assurance inspections on work</p> <p>16 that the company itself was contracted to</p> <p>17 do.</p> <p>18 <b>Q. All right. Well, let me back</b></p> <p>19 <b>up. What kind of merchandise did they</b></p> <p>20 <b>represent?</b></p> <p>21 A. To -- when CVS purchased</p> <p>22 Revco, they would hire PIA to come in,</p> <p>23 gut it, and make it look like CVS. So it</p>                                                           |
| <p style="text-align: right;">Page 22</p> <p>1 it was the three surrounding cities.</p> <p>2 <b>Q. Okay.</b></p> <p>3 A. And the district manager was</p> <p>4 just responsible for ensuring that the</p> <p>5 circulation department new subscribers</p> <p>6 and regular subscribers were not only</p> <p>7 receiving their paper but collections</p> <p>8 were being done properly, that routes</p> <p>9 were done properly, just for the</p> <p>10 distribution of the paper.</p> <p>11 <b>Q. And how long did you do that?</b></p> <p>12 A. I'm not one hundred percent</p> <p>13 sure how long I stayed there.</p> <p>14 <b>Q. Well, again, just --</b></p> <p>15 A. About a year maybe.</p> <p>16 <b>Q. Okay. Why did you leave</b></p> <p>17 <b>them?</b></p> <p>18 A. I accepted a position with a</p> <p>19 company called PIA.</p> <p>20 <b>Q. PIA?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. What does that stand for?</b></p> <p>23 A. That's just their name, and</p>                                                                                                                                            | <p style="text-align: right;">Page 24</p> <p>1 was like floor planning and remodeling,</p> <p>2 per se.</p> <p>3 <b>Q. So they didn't really have</b></p> <p>4 <b>like shampoo as their merchandise. What</b></p> <p>5 <b>they did is they --</b></p> <p>6 A. No, what they did is they</p> <p>7 physically set it.</p> <p>8 <b>Q. -- rearranged the merchandise</b></p> <p>9 <b>of other vendors?</b></p> <p>10 A. That's correct.</p> <p>11 <b>Q. And you would do what, go to</b></p> <p>12 <b>the store and make sure it was set up</b></p> <p>13 <b>like it was supposed to be?</b></p> <p>14 A. That's correct.</p> <p>15 <b>Q. How often did you have to do</b></p> <p>16 <b>that?</b></p> <p>17 A. Well, from the size of the</p> <p>18 project, it was whenever completion,</p> <p>19 whenever a store was completed, one of</p> <p>20 the field managers would call me, and I</p> <p>21 would go out to that location just to</p> <p>22 make sure that the planograms were done</p> <p>23 correctly, the contracts and everything</p> |

6 (Pages 21 to 24)



## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 25</p> <p>1 was signed and complete. And it can be<br/> 2 daily. Sometimes I'm in one location<br/> 3 three and four days just depending on<br/> 4 what's happening.<br/> 5 <b>Q. Well, I guess what I'm trying</b><br/> 6 <b>to figure out is this is kind of like a</b><br/> 7 <b>contract position? I mean, like you</b><br/> 8 <b>wouldn't go like every day 8:00 to 5:00?</b><br/> 9 A. No. We never stayed in one<br/> 10 location. It depended on how long it<br/> 11 took. If you went into a location, it<br/> 12 just depended on how much work it took to<br/> 13 pull all the shelving out, have other<br/> 14 contractors come in and put shelving in,<br/> 15 and then reset the shelves.<br/> 16 <b>Q. So y'all would actually put</b><br/> 17 <b>the merchandise on the shelves and</b><br/> 18 <b>organize it in the manner it was supposed</b><br/> 19 <b>to be organized?</b><br/> 20 A. Planogram, yes.<br/> 21 <b>Q. So was it a full-time job?</b><br/> 22 A. Yes.<br/> 23 <b>Q. All right. How long did you</b></p> | <p style="text-align: right;">Page 27</p> <p>1 cities within that state, and then that<br/> 2 would be the state that I would be<br/> 3 assigned to until it's complete. And<br/> 4 then we would pick up and move to the<br/> 5 following state. And it was done state<br/> 6 by state by state.<br/> 7 <b>Q. Did you have like the same</b><br/> 8 <b>group of people that y'all went together</b><br/> 9 <b>or --</b><br/> 10 A. I had five field managers,<br/> 11 and each of them had two supervisors that<br/> 12 worked for them.<br/> 13 <b>Q. All right. Why did you leave</b><br/> 14 <b>PIA?</b><br/> 15 A. My wife was relocating, and<br/> 16 my son was back in Athens, Georgia, so I<br/> 17 went back to Athens.<br/> 18 <b>Q. All right. See, where did</b><br/> 19 <b>you go? I messed up where you went.</b><br/> 20 <b>When you say you went back to Athens,</b><br/> 21 <b>you left Athens and went where?</b><br/> 22 A. With the traveling, if we're<br/> 23 doing North Carolina, it could take a</p> |
| <p style="text-align: right;">Page 26</p> <p>1 <b>work for them, PIA?</b><br/> 2 A. About two and a half, three<br/> 3 years.<br/> 4 <b>Q. Okay. And was it all in the</b><br/> 5 <b>Athens, Georgia, area?</b><br/> 6 A. No. I did extensive travel<br/> 7 for them.<br/> 8 <b>Q. Okay. Who was the</b><br/> 9 <b>supervisor?</b><br/> 10 A. Floyd Baker.<br/> 11 <b>Q. And where was Mr. Baker</b><br/> 12 <b>located?</b><br/> 13 A. He was in Pennsylvania,<br/> 14 Philadelphia.<br/> 15 <b>Q. Okay. So basically they</b><br/> 16 <b>would assign you to a certain location</b><br/> 17 <b>depending on where you needed to organize</b><br/> 18 <b>the merchandise in a particular --</b><br/> 19 A. Right. It was what they call<br/> 20 a merchandising upgrade which means we<br/> 21 would start -- because it was going<br/> 22 nationwide. So we would start in a<br/> 23 particular city and state and do several</p>                                                                                                                                           | <p style="text-align: right;">Page 28</p> <p>1 month or so. If we're doing South<br/> 2 Carolina, it could take an additional<br/> 3 month. When I say I went back to Athens,<br/> 4 at the time I was in New York, but it was<br/> 5 still with PIA doing the same things.<br/> 6 It's just that at the time that the job<br/> 7 ended with PIA, I went back to Georgia.<br/> 8 I had been in New York for about three<br/> 9 months.<br/> 10 <b>Q. Okay. So when you say your</b><br/> 11 <b>wife was relocating, she was leaving</b><br/> 12 <b>Athens?</b><br/> 13 A. Yes.<br/> 14 <b>Q. Where was she going?</b><br/> 15 A. Just to Augusta, Georgia.<br/> 16 <b>Q. To Augusta?</b><br/> 17 A. Uh-huh (positive response).<br/> 18 <b>Q. Is she still in the military</b><br/> 19 <b>at this point?</b><br/> 20 A. Yes.<br/> 21 <b>Q. But your son was staying in</b><br/> 22 <b>Athens?</b><br/> 23 A. Correct. That's where her</p>                                                                                     |

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# FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 29</p> <p>1 mother lives.</p> <p>2 <b>Q. Arlando was staying in</b></p> <p>3 <b>Athens?</b></p> <p>4 A. Correct.</p> <p>5 <b>Q. With Ms. Barnes' mother?</b></p> <p>6 A. That's correct.</p> <p>7 <b>Q. Okay. And so she moves to</b></p> <p>8 <b>Augusta, but you come back to Athens to</b></p> <p>9 <b>stay there with your son?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. Okay. Where did you go to</b></p> <p>12 <b>work then?</b></p> <p>13 A. I started my own company.</p> <p>14 <b>Q. Okay. What was it called?</b></p> <p>15 A. Prestige Merchandising.</p> <p>16 <b>Q. All right. Tell me about</b></p> <p>17 <b>that company.</b></p> <p>18 A. It's the same as PIA. I just</p> <p>19 did it individually.</p> <p>20 <b>Q. All right. So basically you</b></p> <p>21 <b>offered your services to companies that</b></p> <p>22 <b>needed merchandise arranged in their</b></p> <p>23 <b>stores?</b></p>         | <p style="text-align: right;">Page 31</p> <p>1 transportation.</p> <p>2 <b>Q. All right. So you did that</b></p> <p>3 <b>for about two years. Why did you stop</b></p> <p>4 <b>doing that?</b></p> <p>5 A. I relocated.</p> <p>6 <b>Q. So you do Prestige</b></p> <p>7 <b>Merchandising all in and around the</b></p> <p>8 <b>Athens area?</b></p> <p>9 A. That's correct.</p> <p>10 <b>Q. Okay. So why did you</b></p> <p>11 <b>relocate?</b></p> <p>12 A. I was thinking that was a</p> <p>13 time frame where Lizzie and I separated.</p> <p>14 <b>Q. Okay. Well, where did you</b></p> <p>15 <b>relocate to?</b></p> <p>16 A. North Augusta, South</p> <p>17 Carolina.</p> <p>18 <b>Q. Well, didn't you tell me she</b></p> <p>19 <b>moved to Augusta?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. All right. So did you</b></p> <p>22 <b>relocate to get closer to her?</b></p> <p>23 A. No. It was for work.</p>                                                                       |
| <p style="text-align: right;">Page 30</p> <p>1 A. Correct.</p> <p>2 <b>Q. Okay. Was it like</b></p> <p>3 <b>incorporated, LLC? What did you --</b></p> <p>4 A. No. It was a proprietorship.</p> <p>5 <b>Q. Okay. And how long did you</b></p> <p>6 <b>do Prestige Merchandising?</b></p> <p>7 A. Approximately about two</p> <p>8 years.</p> <p>9 <b>Q. Give me an example of who --</b></p> <p>10 <b>name two clients.</b></p> <p>11 A. I had Johnson &amp; Johnson and</p> <p>12 McClain Distributors.</p> <p>13 <b>Q. All right. Now Johnson &amp;</b></p> <p>14 <b>Johnson, I know baby shampoo and all the</b></p> <p>15 <b>way up to --</b></p> <p>16 A. Much larger.</p> <p>17 <b>Q. I was going to say all the</b></p> <p>18 <b>way up to detergent?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. I don't know who McClain</b></p> <p>21 <b>Merchandising is.</b></p> <p>22 A. They are more so like candy</p> <p>23 vendors. They do a lot of candy</p> | <p style="text-align: right;">Page 32</p> <p>1 <b>Q. All right. Well, let's back</b></p> <p>2 <b>up.</b></p> <p>3 A. Okay.</p> <p>4 <b>Q. She is in Augusta. You are</b></p> <p>5 <b>in Athens. Y'all decide, you think, to</b></p> <p>6 <b>get separated during this time?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. All right. So you closed</b></p> <p>9 <b>down your business? Do you sell it?</b></p> <p>10 <b>What do you do with it?</b></p> <p>11 A. I completed the contract and</p> <p>12 closed it.</p> <p>13 <b>Q. Complete the contract and</b></p> <p>14 <b>closed it. And when you say completed</b></p> <p>15 <b>the contract, with these clients that you</b></p> <p>16 <b>mentioned?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. And you complete the</b></p> <p>19 <b>contract, close it. During this time are</b></p> <p>20 <b>you applying for jobs in other locations?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. What type of jobs are you</b></p> <p>23 <b>looking for?</b></p> |

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**367 VALLEY AVENUE**  
**(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660**

# FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 33</p> <p>1 A. Anything in merchandising or<br/>2 quality assurance and also food.<br/>3 <b>Q. Why food?</b><br/>4 A. Training.<br/>5 <b>Q. What do you mean training?</b><br/>6 A. Anything in the food training<br/>7 industry. They have people who train<br/>8 health inspection. They have people who<br/>9 train surveys and things like that.<br/>10 <b>Q. So you were actually looking</b><br/>11 <b>for a training position or a quality</b><br/>12 <b>assurance position?</b><br/>13 A. Yes.<br/>14 <b>Q. Okay. When you say North</b><br/>15 <b>Augusta -- you said South Carolina --</b><br/>16 A. That's correct.<br/>17 <b>Q. -- but did you say a city?</b><br/>18 A. North Augusta is a city in<br/>19 South Carolina.<br/>20 <b>Q. Thank you. That's what I</b><br/>21 <b>wanted to know. North Augusta in South</b><br/>22 <b>Carolina?</b><br/>23 A. Yes.</p>           | <p style="text-align: right;">Page 35</p> <p>1 A. No, more than that. I<br/>2 physically went into the restaurant and<br/>3 learned the operations.<br/>4 <b>Q. You mean as part of your</b><br/>5 <b>training when you started?</b><br/>6 A. That's correct.<br/>7 <b>Q. Okay. So you learned the</b><br/>8 <b>operations, and then you would do</b><br/>9 <b>training?</b><br/>10 A. That's correct.<br/>11 <b>Q. Okay. How long were you</b><br/>12 <b>employed with Bojangles?</b><br/>13 A. That was so long ago. Around<br/>14 about three years, I think.<br/>15 <b>Q. I think you must have started</b><br/>16 <b>there around '99 just adding up how long</b><br/>17 <b>you think that you worked at these other</b><br/>18 <b>places; is that right?</b><br/>19 A. Around about '99, yes.<br/>20 <b>Q. All right. So were you</b><br/>21 <b>always the training director or did you</b><br/>22 <b>have other titles at Bojangles?</b><br/>23 A. I was the training unit</p> |
| <p style="text-align: right;">Page 34</p> <p>1 <b>Q. Okay. What did you go there</b><br/>2 <b>for?</b><br/>3 A. Work.<br/>4 <b>Q. I know, but I mean what job?</b><br/>5 A. I'm sorry. Training director<br/>6 for Bojangles Restaurant.<br/>7 <b>Q. Now, when you say training</b><br/>8 <b>director, what type of training?</b><br/>9 A. I trained the managers who<br/>10 were going to be going into the<br/>11 restaurants. I trained the health and<br/>12 sanitation, and I inspected the<br/>13 restaurants for safety and sanitation as<br/>14 well.<br/>15 <b>Q. But what did you train the</b><br/>16 <b>managers? I mean, when you say you're</b><br/>17 <b>training the managers, you don't mean --</b><br/>18 A. Restaurant operations.<br/>19 <b>Q. You mean restaurant</b><br/>20 <b>operations?</b><br/>21 A. Yes.<br/>22 <b>Q. Just the health and</b><br/>23 <b>sanitation part or more than that?</b></p> | <p style="text-align: right;">Page 36</p> <p>1 director as well.<br/>2 <b>Q. What's the difference in</b><br/>3 <b>training director and training unit</b><br/>4 <b>director?</b><br/>5 A. Training unit director, I<br/>6 physically worked in the restaurant. It<br/>7 was the certification restaurant for all<br/>8 the restaurants in the region.<br/>9 <b>Q. Okay. So you worked in the</b><br/>10 <b>certification restaurant. Which one was</b><br/>11 <b>that?</b><br/>12 A. Martinez, Georgia.<br/>13 <b>Q. All right. So let's back up</b><br/>14 <b>here. You first go to North Augusta,</b><br/>15 <b>South Carolina. Is that their</b><br/>16 <b>headquarters or something?</b><br/>17 A. No. That's where I resided,<br/>18 in North Augusta, South Carolina.<br/>19 <b>Q. You lived there?</b><br/>20 A. That's correct.<br/>21 <b>Q. But you worked at the</b><br/>22 <b>Bojangles in Martinez, Georgia?</b><br/>23 A. Correct. It's fifteen</p>                     |

9 (Pages 33 to 36)

**367 VALLEY AVENUE**  
**(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660**

## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 37</p> <p>1 minutes this way you're in South<br/>2 Carolina, fifteen-minute drive you're in<br/>3 Georgia.<br/>4 <b>Q. Okay.</b><br/>5 A. So it's just within the<br/>6 region where I would have to travel to.<br/>7 <b>Q. Why did you pick North</b><br/>8 <b>Augusta, South Carolina? Did you have</b><br/>9 <b>relatives there or something?</b><br/>10 A. No. Just the housing.<br/>11 <b>Q. So you moved to North Augusta</b><br/>12 <b>for the job that -- was the restaurant</b><br/>13 <b>located in Martinez, Georgia?</b><br/>14 A. I didn't know exactly where<br/>15 it was. I knew I would be in that<br/>16 market. So I chose --<br/>17 <b>Q. That's what I was trying to</b><br/>18 <b>get to.</b><br/>19 A. Yes.<br/>20 <b>Q. When you first took the job,</b><br/>21 <b>where did you physically go to work?</b><br/>22 <b>Maybe that's a better question.</b><br/>23 A. I physically started at that</p>                                                           | <p style="text-align: right;">Page 39</p> <p>1 A. And the training unit<br/>2 director means I was physically in<br/>3 Martinez restaurant. I physically worked<br/>4 out of the restaurant.<br/>5 <b>Q. Okay.</b><br/>6 A. As the training director, I<br/>7 traveled all restaurants. I didn't<br/>8 physically go into the same restaurant<br/>9 every day.<br/>10 <b>Q. Yeah. I mean, I may have it</b><br/>11 <b>backwards. That's why I'm asking. You</b><br/>12 <b>said you were a training director, but</b><br/>13 <b>did you actually start as a training unit</b><br/>14 <b>director for just the Martinez market?</b><br/>15 A. That was my first title, yes.<br/>16 <b>Q. And then you became the</b><br/>17 <b>training director for that region?</b><br/>18 A. That's correct.<br/>19 <b>Q. Okay. Any other titles while</b><br/>20 <b>you were there?</b><br/>21 A. Just I did -- when I started,<br/>22 it's manager, and then that -- that's how<br/>23 you hired in. You hired in as a manager,</p>            |
| <p style="text-align: right;">Page 38</p> <p>1 training restaurant.<br/>2 <b>Q. Okay. So you started at this</b><br/>3 <b>restaurant, and you start as the training</b><br/>4 <b>director for that area or was it for the</b><br/>5 <b>whole country? I don't know how big this</b><br/>6 <b>place is. I mean, you know, Bojangles,</b><br/>7 <b>I don't know, is it all over the country?</b><br/>8 A. Right. No. It's for that<br/>9 market, and it's nine -- ten units in<br/>10 that market.<br/>11 <b>Q. Okay. So you're the training</b><br/>12 <b>director for Bojangles in -- did they</b><br/>13 <b>have a name of that market?</b><br/>14 A. Martinez is what we called<br/>15 it.<br/>16 <b>Q. All right. We'll call it</b><br/>17 <b>Martinez. So you were the training</b><br/>18 <b>director for ten to twelve restaurants in</b><br/>19 <b>the Martinez market?</b><br/>20 A. Correct.<br/>21 <b>Q. All right. And then you</b><br/>22 <b>became the unit -- training unit</b><br/>23 <b>director?</b></p> | <p style="text-align: right;">Page 40</p> <p>1 and then once you graduate from the<br/>2 management course, then it was the<br/>3 training unit director, and then the next<br/>4 promotion was the --<br/>5 <b>Q. Let's see. That's why we're</b><br/>6 <b>confused. When I asked you what you did,</b><br/>7 <b>you started with your last title.</b><br/>8 A. Okay.<br/>9 <b>Q. What you actually did is you</b><br/>10 <b>were hired as a manager of a restaurant?</b><br/>11 A. No. I was hired as a<br/>12 training manager, but I had to start out<br/>13 as a manager to learn operations. In the<br/>14 business, when you go in, it's just like<br/>15 as a MIT. You're hired as a general<br/>16 manager, but you're MIT, and then you<br/>17 complete the MIT course, and that makes<br/>18 you a manager now.<br/>19 <b>Q. MIT meaning manager in</b><br/>20 <b>training?</b><br/>21 A. Manager in training.<br/>22 <b>Q. I understand. When you used</b><br/>23 <b>the term training manager, I took you to</b></p> |

10 (Pages 37 to 40)

## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 41</p> <p>1 mean that you were hired to train<br/>2 managers. But what you're trying to say<br/>3 is that you were hired as a manager in<br/>4 training?<br/>5 A. No. I was hired to train<br/>6 managers, but when you said to list the<br/>7 jobs, the way they did my titles, I was<br/>8 hired to train managers.<br/>9 Q. Okay.<br/>10 A. But as a MIT -- I went<br/>11 through the course as a MIT, and once you<br/>12 complete the MIT course, your title<br/>13 changes to manager.<br/>14 Q. Right. I understand that.<br/>15 I'm just trying to figure out how you<br/>16 could be hired to train managers when<br/>17 you've never had any experience at<br/>18 training managers in the restaurant<br/>19 business, if I understand your history<br/>20 correctly.<br/>21 A. Okay. The training aspect of<br/>22 it wasn't about being able to train<br/>23 people. I went through the restaurant in</p> | <p style="text-align: right;">Page 43</p> <p>1 A. Right. Restaurant training.<br/>2 Q. Restaurant training?<br/>3 A. Yes.<br/>4 Q. And how long did that last?<br/>5 A. Eleven weeks, approximately<br/>6 eleven weeks.<br/>7 Q. After you do the restaurant<br/>8 training, then do you act as a manager in<br/>9 the restaurant for a period of time?<br/>10 A. Yes. You go through<br/>11 restaurant operations, yes.<br/>12 Q. So how long then did you act<br/>13 as a manager in the restaurant after the<br/>14 first eleven weeks?<br/>15 A. About six weeks to get my own<br/>16 certification.<br/>17 Q. So then you worked there for<br/>18 six weeks as the restaurant manager?<br/>19 A. Correct.<br/>20 Q. Is this at Martinez?<br/>21 A. Correct.<br/>22 Q. Okay. After that six weeks,<br/>23 what do you do?</p> |
| <p style="text-align: right;">Page 42</p> <p>1 order to know operations. So in order to<br/>2 learn how the company, hands-on how it<br/>3 works, that's the way you do it. I mean,<br/>4 I can't train you how to make a biscuit<br/>5 if I don't know how to make a biscuit<br/>6 myself. So it was to physically go<br/>7 through hands-on and then to take it from<br/>8 there to the next level.<br/>9 Q. Okay. So when you applied<br/>10 for the job, you are applying for a job<br/>11 to work in the training department for<br/>12 this area to train people?<br/>13 A. In the field, yes.<br/>14 Q. In the field?<br/>15 A. Yes.<br/>16 Q. How to be a manager?<br/>17 A. Yes.<br/>18 Q. Okay. But you have to be<br/>19 trained to be a manager first?<br/>20 A. No. I have to be trained in<br/>21 operations first.<br/>22 Q. All right. So you go through<br/>23 operations training first?</p>                                           | <p style="text-align: right;">Page 44</p> <p>1 A. I get my certification and<br/>2 become into the position of the training<br/>3 manager.<br/>4 Q. Okay. Now, as the training<br/>5 manager, you are now training people who<br/>6 were, like yourself, nineteen weeks prior<br/>7 to this or seventeen weeks prior to this,<br/>8 coming into the training program?<br/>9 A. That's correct.<br/>10 Q. Okay.<br/>11 A. That's correct.<br/>12 Q. How long did you do that?<br/>13 A. For about nine months to a<br/>14 year.<br/>15 Q. Okay. After that what did<br/>16 you do?<br/>17 A. And then that's when I went<br/>18 to the field.<br/>19 Q. That's when you became the<br/>20 district training manager?<br/>21 A. Correct.<br/>22 Q. Training director you said is<br/>23 what the title was?</p>                     |

11 (Pages 41 to 44)



## FREEDOM COURT REPORTING

| Page 45                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 47                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
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| <p>1 A. Yes.</p> <p>2 Q. Training director. Okay.</p> <p>3 And it was training director for that</p> <p>4 Martinez market which was ten to twelve</p> <p>5 stores?</p> <p>6 A. Correct.</p> <p>7 Q. How long did you do that?</p> <p>8 A. Approximately three and a</p> <p>9 half, four years.</p> <p>10 Q. Okay. So basically you were</p> <p>11 with Bojangles about five years?</p> <p>12 A. Pretty much, yes.</p> <p>13 Q. Okay. What was your title</p> <p>14 after that?</p> <p>15 A. I went to Cracker Barrel.</p> <p>16 Q. Oh, you came straight from</p> <p>17 Bojangles to apply to Cracker Barrel?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Then let me make sure</p> <p>20 I have this right. You're in the</p> <p>21 training unit director for about a year</p> <p>22 after your first seventeen weeks of the</p> <p>23 training we've talked about. Then for</p>                                                        | <p>1 Q. Okay. Why did you leave</p> <p>2 Bojangles?</p> <p>3 A. I was recruited by Cracker</p> <p>4 Barrel. I apologize. That's incorrect.</p> <p>5 I left Bojangles because they switched</p> <p>6 from corporate to franchise.</p> <p>7 Q. Okay. What do you mean by</p> <p>8 that?</p> <p>9 A. They sold -- Bojangles</p> <p>10 corporate sold off that portion of the</p> <p>11 market, and it became the franchise</p> <p>12 market.</p> <p>13 Q. Okay. So Bojangles sold the</p> <p>14 Martinez area?</p> <p>15 A. Correct.</p> <p>16 Q. And it became a franchise?</p> <p>17 A. Correct.</p> <p>18 Q. Who bought it?</p> <p>19 A. I don't know.</p> <p>20 Q. Okay. But it happened before</p> <p>21 you left there?</p> <p>22 A. That's correct.</p> <p>23 Q. All right. So you worked</p> |
| Page 46                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Page 48                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p>1 three and a half to four years you're the</p> <p>2 training director for that region,</p> <p>3 correct?</p> <p>4 A. Approximately, yes.</p> <p>5 Q. All right. So if my timing</p> <p>6 is right, that's about five years. So</p> <p>7 we're up to 2004 about?</p> <p>8 A. 2002. From '99 to 2002.</p> <p>9 That's about four years.</p> <p>10 Q. Okay. No. That's only three</p> <p>11 years at best. I mean, we may have the</p> <p>12 years wrong. I'm just trying to really</p> <p>13 get a feel for how long were you with</p> <p>14 this company, Bojangles.</p> <p>15 A. Okay. I understand. I</p> <p>16 traveled so much.</p> <p>17 Q. Do you think it was about</p> <p>18 four years, five years? We added up</p> <p>19 about five years based on the time for</p> <p>20 you to do those tasks you described, but</p> <p>21 --</p> <p>22 A. I think it was for about four</p> <p>23 years, closer to four years.</p> | <p>1 with them for a time while it was</p> <p>2 franchise?</p> <p>3 A. Just a couple of months.</p> <p>4 Q. Was it still called</p> <p>5 Bojangles?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. So what did you do,</p> <p>8 turn in your notice, or what happened?</p> <p>9 A. Yes, I turned in my notice.</p> <p>10 Q. All right. So then where did</p> <p>11 you go?</p> <p>12 A. I met with Ted Moore, liaison</p> <p>13 to the Atlanta market.</p> <p>14 Q. Say that again?</p> <p>15 A. The recruiter for Cracker</p> <p>16 Barrel, Ted Moore.</p> <p>17 Q. So did you know him before</p> <p>18 this?</p> <p>19 A. No.</p> <p>20 Q. I mean --</p> <p>21 A. He contacted me versus my</p> <p>22 resume online.</p> <p>23 Q. You had your resume posted</p>                                           |

12 (Pages 45 to 48)



# FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 49</p> <p>1 online?</p> <p>2 A. Yes.</p> <p>3 Q. Like how did you post it?</p> <p>4 A. Monster.com.</p> <p>5 Q. And is he employed by Cracker</p> <p>6 Barrel?</p> <p>7 A. Yes.</p> <p>8 Q. All right. So you had your</p> <p>9 resume posted on Monster.com, and Ted</p> <p>10 Moore contacted you?</p> <p>11 A. Correct.</p> <p>12 Q. Do you remember when that</p> <p>13 was?</p> <p>14 A. No.</p> <p>15 Q. All right. Well, what did he</p> <p>16 say when he called you?</p> <p>17 A. He asked if I would meet</p> <p>18 him. He was in the Atlanta market, and I</p> <p>19 drove down on my day off and met with</p> <p>20 him.</p> <p>21 Q. So you were still working</p> <p>22 when you met him?</p> <p>23 A. That's correct.</p>                                                                                                                                                                    | <p style="text-align: right;">Page 51</p> <p>1 test did you do?</p> <p>2 A. It was -- I'm just thinking.</p> <p>3 I've taken so many. With Cracker Barrel</p> <p>4 it was one -- if I'm not mistaken, about</p> <p>5 P&amp;Ls, profit and losses, and how to do</p> <p>6 calculations on food and things of that</p> <p>7 nature.</p> <p>8 Q. All right. Did you meet him</p> <p>9 like at a --</p> <p>10 A. At a restaurant.</p> <p>11 Q. That's what I was going to</p> <p>12 ask you, at a Cracker Barrel restaurant?</p> <p>13 A. Yes.</p> <p>14 Q. Which one was it? Do you</p> <p>15 remember?</p> <p>16 A. No, I do not.</p> <p>17 Q. All right. I at least might</p> <p>18 have your application. That would help</p> <p>19 us get the exact date on this.</p> <p>20 MS. BUSBY: Go off the record</p> <p>21 for a minute.</p> <p>22 (Whereupon, a discussion off</p> <p>23 the record was held.)</p>                                                                       |
| <p style="text-align: right;">Page 50</p> <p>1 Q. Okay. Do you have any memory</p> <p>2 of when that was?</p> <p>3 A. No, I don't.</p> <p>4 Q. Do you keep any kind of like</p> <p>5 calendar or anything from year to year</p> <p>6 with your appointments on it?</p> <p>7 A. I've relocated so much. I've</p> <p>8 moved so much with Cracker Barrel, with</p> <p>9 other companies.</p> <p>10 Q. You don't keep that kind of</p> <p>11 stuff?</p> <p>12 A. No, I don't have that.</p> <p>13 Q. Okay. Well, anyway, you</p> <p>14 drive down and met with him in Atlanta?</p> <p>15 A. Yes.</p> <p>16 Q. All right. And then what</p> <p>17 happens after that?</p> <p>18 A. I interviewed with them and</p> <p>19 they asked me to do a test and to do</p> <p>20 paperwork for like previous work history</p> <p>21 and background check, I guess you can</p> <p>22 call it, type information.</p> <p>23 Q. All right. Now, what kind of</p> | <p style="text-align: right;">Page 52</p> <p>1 Q. I'm going to show you what</p> <p>2 I'm marking as Exhibit 1 to your</p> <p>3 deposition and give you a second to look</p> <p>4 at it.</p> <p>5 (Whereupon, Defendant's</p> <p>6 Exhibit No. 1 was marked for</p> <p>7 identification and copy of same is</p> <p>8 attached hereto.)</p> <p>9 Q. All right. Exhibit 1, I</p> <p>10 believe, is your resume, if you look --</p> <p>11 is this what you were referring to when</p> <p>12 you said you posted it on Monster.com?</p> <p>13 A. Yes.</p> <p>14 Q. It really looks like it</p> <p>15 starts at the bottom of page one; is that</p> <p>16 right? Objective?</p> <p>17 A. Yes.</p> <p>18 Q. What it looks like to me is</p> <p>19 that somebody has e-mailed this to</p> <p>20 somebody. I guess Monster sent it. At</p> <p>21 the beginning of page one it says Monster</p> <p>22 resume, and it has a number. Do you see</p> <p>23 that right there in the middle?</p> |

13 (Pages 49 to 52)

## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 53</p> <p>1 A. Yes.</p> <p>2 Q. And your e-mail is</p> <p>3 DNRODG@YAHOO.COM?</p> <p>4 A. Yes.</p> <p>5 Q. And on Friday, June the 21st,</p> <p>6 you sent it to Burt Medoff, M-e-d-o-f-f,</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. Who is that?</p> <p>10 A. I don't know. It could be</p> <p>11 another person that they hired to recruit</p> <p>12 for them or -- I don't know.</p> <p>13 Q. You don't remember ever</p> <p>14 talking or meeting with that person?</p> <p>15 A. No.</p> <p>16 Q. Okay. Ted Moore is at the</p> <p>17 top of the page. That's who --</p> <p>18 A. Contacted me, yes.</p> <p>19 Q. Contacted you? All right.</p> <p>20 Now, it has on here a Stone Mountain,</p> <p>21 Georgia address. Whose address was that?</p> <p>22 A. That was mine.</p> <p>23 Q. Well, had you already moved</p>                                                                                                                                                                                | <p style="text-align: right;">Page 55</p> <p>1 Q. Yeah, sometime prior to June</p> <p>2 21st.</p> <p>3 A. Yeah.</p> <p>4 Q. And so at the time you posted</p> <p>5 it, you were still working for Bojangles</p> <p>6 based on what you told me a few minutes</p> <p>7 ago. So I'm just trying to establish we</p> <p>8 know you were working at Bojangles until</p> <p>9 at least June of 2002?</p> <p>10 A. Actually, the posting that's</p> <p>11 on here is -- it was posted prior to</p> <p>12 that, but as you update it, it changes</p> <p>13 dates.</p> <p>14 Q. Okay.</p> <p>15 A. So even today if I make any</p> <p>16 changes on it and save it, it will render</p> <p>17 today's date.</p> <p>18 Q. Okay. Let me just ask a</p> <p>19 better question. All I'm trying to get</p> <p>20 to is try to help us get to a timeline of</p> <p>21 when you worked at Bojangles.</p> <p>22 A. Okay.</p> <p>23 Q. So you think it would -- do</p> |
| <p style="text-align: right;">Page 54</p> <p>1 then from North Augusta?</p> <p>2 A. Yes, I was already moving to</p> <p>3 the Atlanta market.</p> <p>4 Q. Okay. So apparently,</p> <p>5 according to your previous testimony, in</p> <p>6 June of '02 you're still employed at</p> <p>7 Bojangles, but you have posted this</p> <p>8 resume on Monster.com because they are</p> <p>9 going to a franchise system, correct?</p> <p>10 A. I'm sorry. Could you ask</p> <p>11 that again?</p> <p>12 Q. Yeah. I'm just trying to get</p> <p>13 us back into our timeline so that we know</p> <p>14 where we are. You had already testified</p> <p>15 that you were working at Bojangles and</p> <p>16 you were -- they had switched to a</p> <p>17 franchise market. So you posted your</p> <p>18 resume on Monster.com. And all I'm</p> <p>19 saying is it looks like you did that</p> <p>20 sometime prior to June 21st, 2002 based</p> <p>21 on this being a Monster resume posting?</p> <p>22 A. That was posted prior to June</p> <p>23 21st?</p> | <p style="text-align: right;">Page 56</p> <p>1 you think you were still working there in</p> <p>2 June of '02?</p> <p>3 A. No. It couldn't have been</p> <p>4 '02.</p> <p>5 Q. All right. Well, let's look</p> <p>6 at this thing and then maybe we can</p> <p>7 figure this thing out. According to this</p> <p>8 you were working at RTM Southeast,</p> <p>9 Incorporated?</p> <p>10 A. That's correct.</p> <p>11 Q. All right. Didn't we talk</p> <p>12 about RTM already? Didn't we have them</p> <p>13 reversed?</p> <p>14 A. No, we haven't.</p> <p>15 Q. We haven't talked about RTM?</p> <p>16 A. That's correct.</p> <p>17 Q. So you work at Bojangles and</p> <p>18 you go from Bojangles to RTM?</p> <p>19 A. That's correct. And then</p> <p>20 from RTM to Cracker Barrel.</p> <p>21 Q. All right. Let's get</p> <p>22 ourselves up to speed here.</p> <p>23 A. Okay.</p>                                                               |

14 (Pages 53 to 56)

# FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 57</p> <p>1 Q. So according to your resume,<br/>2 you go from the Athens Daily News to the<br/>3 Bojangles?<br/>4 A. Yes.<br/>5 Q. But you didn't have listed on<br/>6 here your own company. So that must have<br/>7 been in between Athens and --<br/>8 A. If you go down one, you'll<br/>9 see Prestige Staffing Merchandising<br/>10 Services, and it says operating partner/<br/>11 owner.<br/>12 Q. So that's you?<br/>13 A. Yes.<br/>14 Q. So which one is right, your<br/>15 resume or your testimony?<br/>16 A. I don't understand.<br/>17 Q. Well, I mean, we're out of<br/>18 order. I just want to know which one is<br/>19 -- you testified in a different order<br/>20 than your resume. Is the resume the<br/>21 correct order versus the --<br/>22 A. The resume is the correct<br/>23 order.</p> | <p style="text-align: right;">Page 59</p> <p>1 the order of these other three.<br/>2 A. Arizona before --<br/>3 Q. So apparently you came from<br/>4 Arizona to PIA, not the Athens newspaper?<br/>5 A. Correct.<br/>6 Q. Okay. Do you see why I'm<br/>7 trying to straighten that out?<br/>8 A. Yes, I understand.<br/>9 Q. Before you told me you<br/>10 started at the Athens newspaper.<br/>11 According to your resume you went PIA,<br/>12 Prestige, Athens, and then Bojangles?<br/>13 A. Correct.<br/>14 Q. Okay. Then according to your<br/>15 resume, you were with Bojangles until<br/>16 August of '01, and then you went to RTM?<br/>17 A. Yes.<br/>18 Q. All right. What is that?<br/>19 A. It's a franchise of Arby's,<br/>20 Mrs. Winner's.<br/>21 Q. I thought you said you left<br/>22 Bojangles because it became a franchise?<br/>23 A. I did.</p>              |
| <p style="text-align: right;">Page 58</p> <p>1 Q. That's fine. I just want to<br/>2 get us in the correct order.<br/>3 A. Okay.<br/>4 Q. All right. So let's look at<br/>5 the resume. According to this, you are<br/>6 with PIA.<br/>7 A. Correct.<br/>8 Q. All right. Then from PIA you<br/>9 go to?<br/>10 A. Prestige.<br/>11 Q. Prestige, which is your own<br/>12 company?<br/>13 A. Yes.<br/>14 Q. And then to the Athens Daily?<br/>15 A. Yes.<br/>16 Q. Then to Bojangles?<br/>17 A. Yes.<br/>18 Q. Because before you said<br/>19 Arizona, Athens, PIA, Prestige.<br/>20 A. Well, you won't see Arizona<br/>21 on here because it didn't list.<br/>22 Q. Well, I'm not even trying to<br/>23 get to that. I'm just trying to get to</p>                                                                                                    | <p style="text-align: right;">Page 60</p> <p>1 Q. Why would you go from one<br/>2 franchise to another franchise?<br/>3 A. The opportunity and the<br/>4 salary. They also offered other<br/>5 incentives.<br/>6 Q. Okay. Let me get back on my<br/>7 notes and get this straight. Okay. So<br/>8 you did not leave Bojangles because you<br/>9 were recruited by Cracker Barrel. We<br/>10 know that is not correct.<br/>11 A. That's why I left RTM.<br/>12 Q. So you left Bojangles because<br/>13 it went to a franchise. Then you went to<br/>14 RTM, which is a franchise of Arby's and<br/>15 Mrs. Winner's, right?<br/>16 A. That's correct.<br/>17 Q. In, according to this resume,<br/>18 Atlanta, Georgia?<br/>19 A. That's correct. I came down<br/>20 to Atlanta.<br/>21 Q. So that's why you moved back<br/>22 to Atlanta?<br/>23 A. Yes. I was already moving to</p> |

15 (Pages 57 to 60)

## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 61</p> <p>1 Atlanta.</p> <p>2 <b>Q. You were moving from</b></p> <p>3 <b>Bojangles because you were quitting there</b></p> <p>4 <b>because they were going to a franchise?</b></p> <p>5 A. Correct.</p> <p>6 <b>Q. All right. Then you went to</b></p> <p>7 <b>Atlanta to work for RTM?</b></p> <p>8 A. Correct.</p> <p>9 <b>Q. Now, did you work in either</b></p> <p>10 <b>an Arby's or a Mrs. Winner's?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. Okay. Which one?</b></p> <p>13 A. Indian Creek in -- I think</p> <p>14 that's Norcross, Georgia.</p> <p>15 <b>Q. Okay. But Indian Creek,</b></p> <p>16 <b>like, what, the Arby's or which one?</b></p> <p>17 A. It's a dual concept. It's</p> <p>18 two restaurants in one. So it's Arby's</p> <p>19 and Mrs. Winner's.</p> <p>20 <b>Q. Mrs. Winner's is chicken,</b></p> <p>21 <b>right?</b></p> <p>22 A. Yes.</p> <p>23 <b>Q. It's a dual concept. Is this</b></p>                                               | <p style="text-align: right;">Page 63</p> <p>1 <b>Q. All right. So were you hired</b></p> <p>2 <b>as the general manager for RTM?</b></p> <p>3 A. RTM? They call it fast</p> <p>4 track.</p> <p>5 <b>Q. All right. Well, let's go</b></p> <p>6 <b>back to Bojangles then.</b></p> <p>7 A. Okay.</p> <p>8 <b>Q. Bojangles, you get wind or</b></p> <p>9 <b>they tell you or they do sell off to</b></p> <p>10 <b>become a franchise. You worked there for</b></p> <p>11 <b>a little while, and you're looking for</b></p> <p>12 <b>another job, and you find it at RTM?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. I mean, how did you find out</b></p> <p>15 <b>about that job?</b></p> <p>16 A. The same.</p> <p>17 <b>Q. Posted -- because of the</b></p> <p>18 <b>posting?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. Somebody called you?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. Do you remember who called</b></p> <p>23 <b>you from them?</b></p>                                                                   |
| <p style="text-align: right;">Page 62</p> <p>1 <b>the only one you're at?</b></p> <p>2 A. No.</p> <p>3 <b>Q. Okay. Which other one did</b></p> <p>4 <b>you go to?</b></p> <p>5 A. Stone Mountain, Georgia.</p> <p>6 <b>Q. And was that a dual concept</b></p> <p>7 <b>or a singular?</b></p> <p>8 A. That's a dual concept as</p> <p>9 well.</p> <p>10 <b>Q. Okay. Now, according to</b></p> <p>11 <b>this, this was 8/2/01. So August of '01,</b></p> <p>12 <b>and you were working there when you</b></p> <p>13 <b>talked to --</b></p> <p>14 A. Ted Moore.</p> <p>15 <b>Q. -- Ted Moore. Okay. So</b></p> <p>16 <b>basically were you not happy or what was</b></p> <p>17 <b>the problem? Because you had a job, but</b></p> <p>18 <b>you had your resume posted on Monster?</b></p> <p>19 A. My resume was always posted.</p> <p>20 I never -- once I put it on, it never</p> <p>21 goes away. Right now today it's still.</p> <p>22 <b>Q. But you update it?</b></p> <p>23 A. That's correct.</p> | <p style="text-align: right;">Page 64</p> <p>1 A. No.</p> <p>2 <b>Q. So somebody calls you, and</b></p> <p>3 <b>you interview with them at RTM?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. And you start in Norcross?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. What is the position that</b></p> <p>8 <b>you're actually hired as?</b></p> <p>9 A. It's, again, as a general</p> <p>10 manager, but they call it fast track.</p> <p>11 They bring you in at that salary because</p> <p>12 they expect you to achieve that rather</p> <p>13 quickly.</p> <p>14 <b>Q. Do they have a manager</b></p> <p>15 <b>training program as well?</b></p> <p>16 A. Yes.</p> <p>17 <b>Q. All right. So you were hired</b></p> <p>18 <b>at the title general manager, but you're</b></p> <p>19 <b>actually training until you, I guess,</b></p> <p>20 <b>pass the training and then get there?</b></p> <p>21 A. That's correct, because you</p> <p>22 have to learn their operations.</p> <p>23 <b>Q. How long does that process</b></p> |

16 (Pages 61 to 64)

# FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 65</p> <p>1 last?</p> <p>2 A. A couple of months, four</p> <p>3 months maybe.</p> <p>4 Q. Okay. When did you start at</p> <p>5 Cracker Barrel?</p> <p>6 A. July 2002.</p> <p>7 Q. Okay. So let's go back to</p> <p>8 this then. You have started August 2001</p> <p>9 at RTM, and you worked for a period in</p> <p>10 Norcross, and then you go to Stone</p> <p>11 Mountain?</p> <p>12 A. That's correct.</p> <p>13 Q. And then because your resume</p> <p>14 is posted on Monster, best you can</p> <p>15 recollect this person named Ted Moore</p> <p>16 contacted you?</p> <p>17 A. Yes.</p> <p>18 Q. And asked you to interview</p> <p>19 with him?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. In some Cracker Barrel</p> <p>22 in the Atlanta market?</p> <p>23 A. Yes.</p>                                         | <p style="text-align: right;">Page 67</p> <p>1 were with RTM?</p> <p>2 A. Yes.</p> <p>3 Q. Who were those two assistant</p> <p>4 managers?</p> <p>5 A. Their names I don't recall.</p> <p>6 Q. And then from there, RTM, you</p> <p>7 went to Cracker Barrel?</p> <p>8 A. Yes.</p> <p>9 Q. All right. July of '02?</p> <p>10 A. Yes.</p> <p>11 Q. Have we covered all your</p> <p>12 employment history up to Cracker Barrel?</p> <p>13 A. Yes.</p> <p>14 Q. All right. Have you ever</p> <p>15 been written up at any of these previous</p> <p>16 employers?</p> <p>17 A. I don't recall any</p> <p>18 documentation from any previous employers</p> <p>19 up to that point.</p> <p>20 Q. What do you mean</p> <p>21 documentation?</p> <p>22 A. Written.</p> <p>23 Q. You might have got a verbal</p>                                                                                                         |
| <p style="text-align: right;">Page 66</p> <p>1 Q. All right. So why did you</p> <p>2 decide to take the job at Cracker Barrel</p> <p>3 and leave RTM?</p> <p>4 A. Just the stability of the</p> <p>5 company. I reviewed their numbers and</p> <p>6 their bonus program and pretty much the</p> <p>7 stability.</p> <p>8 Q. So did you work out a notice</p> <p>9 at RTM?</p> <p>10 A. Yes.</p> <p>11 Q. How long a notice was it?</p> <p>12 A. Two weeks.</p> <p>13 Q. Who was your immediate</p> <p>14 supervisor at RTM?</p> <p>15 A. Rundell.</p> <p>16 Q. Spell that for me.</p> <p>17 A. R-u-n-d-e-l-l.</p> <p>18 Q. Okay. Was he like, what, the</p> <p>19 district manager?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. When you worked in --</p> <p>22 this says here on your resume that you</p> <p>23 managed two assistant managers while you</p> | <p style="text-align: right;">Page 68</p> <p>1 warning about something?</p> <p>2 A. No disciplinary, nothing</p> <p>3 disciplinary.</p> <p>4 Q. Okay. Have you ever been</p> <p>5 talked to about, you know, you need to</p> <p>6 improve your management skills or do this</p> <p>7 better or that better?</p> <p>8 A. That would always be done in</p> <p>9 evaluations, if they needed to say that.</p> <p>10 Q. All right. So no</p> <p>11 disciplines?</p> <p>12 A. Correct.</p> <p>13 Q. All right. Have you ever</p> <p>14 been terminated from a job?</p> <p>15 A. No. They were done with</p> <p>16 notice.</p> <p>17 Q. You were hesitating. What</p> <p>18 were you thinking about?</p> <p>19 A. Because when you say from a</p> <p>20 job ever, I'm thinking, you know from</p> <p>21 teenager and all that.</p> <p>22 Q. No. I'm sorry. I was not</p> <p>23 referring to that. I mean of these</p> |

17 (Pages 65 to 68)

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 69</p> <p>1 companies we've referred to in your adult<br/>2 life, you've not been terminated from any<br/>3 of them?<br/>4 A. No.<br/>5 Q. And then on the back page of<br/>6 this it talks about three colleges, and<br/>7 you only talked about the Commonwealth<br/>8 College.<br/>9 A. University of Maryland is<br/>10 when I was in the military.<br/>11 Q. Where is that located?<br/>12 A. I was in Europe. It's just a<br/>13 branch.<br/>14 Q. It's like a correspondence<br/>15 course or something?<br/>16 A. Right.<br/>17 Q. Is it affiliated with the<br/>18 military?<br/>19 A. It's on the military<br/>20 installation, but it's the university<br/>21 that's on the --<br/>22 Q. You do it on a computer?<br/>23 A. No, it's a class.</p> | <p style="text-align: right;">Page 71</p> <p>1 only a half a year away from getting a<br/>2 degree?<br/>3 A. Yes.<br/>4 Q. Am I reading that right?<br/>5 A. Yes.<br/>6 Q. In what?<br/>7 A. Business --<br/>8 Q. You say bachelor's, but I --<br/>9 A. Business management.<br/>10 Q. So at Commonwealth you did a<br/>11 year. At University of Maryland you did<br/>12 about one and a half years and at Cochise<br/>13 you did about a year?<br/>14 A. Cochise.<br/>15 Q. Cochise?<br/>16 A. Yes.<br/>17 Q. Have you been to any other<br/>18 schools?<br/>19 A. You mean physical schools<br/>20 like the facility or have I had to take<br/>21 additional classes?<br/>22 Q. Well, either way. What have<br/>23 your classes been in? Have you taken</p>                                                                                                                                                                                                                 |
| <p style="text-align: right;">Page 70</p> <p>1 Q. You physically sit in a<br/>2 class?<br/>3 A. Yes.<br/>4 Q. What is that next one?<br/>5 A. Cochise College.<br/>6 Q. Where is that?<br/>7 A. That's in Arizona, Sierra<br/>8 Vista, Arizona.<br/>9 Q. So that was a physical<br/>10 location?<br/>11 A. Yes.<br/>12 Q. Where you physically went to<br/>13 class?<br/>14 A. Yes.<br/>15 Q. So this middle one is they<br/>16 have some branch at the University of<br/>17 Maryland on one of these bases?<br/>18 A. That's correct.<br/>19 Q. Which base was it?<br/>20 A. I went in several bases. The<br/>21 last one I attended was Camp Darby in<br/>22 Livorno, Italy.<br/>23 Q. Well, it looks like you're</p>                                                                         | <p style="text-align: right;">Page 72</p> <p>1 additional classes? Is that what you're<br/>2 trying to tell me?<br/>3 A. Well, like Serve Safe, and<br/>4 I've also taken employee rights classes<br/>5 and different things. Are you asking<br/>6 those questions?<br/>7 Q. So you have taken different<br/>8 classes related to your employment work?<br/>9 A. Correct.<br/>10 Q. No. I'm talking about have<br/>11 you taken any other -- been to any other<br/>12 schools, classes, whether it's computer,<br/>13 whether it's a correspondence, whether<br/>14 it's physical location, other than these<br/>15 three that you've listed that would<br/>16 contribute towards your degree that you<br/>17 said you were seeking?<br/>18 A. No.<br/>19 Q. Okay. Serve Safe is a<br/>20 program that -- that is the Cracker<br/>21 Barrel -- the program that Cracker Barrel<br/>22 utilizes, I believe, but what it is is<br/>23 it's from the health departments where</p> |

18 (Pages 69 to 72)



## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 73</p> <p>1 they talk about how do you serve safe<br/>2 food? Is that what you're referring to?<br/>3 A. Yes.<br/>4 Q. And I know it's called by<br/>5 different names. And Cracker Barrel may<br/>6 call it a different name than Bojangles<br/>7 than RTM, but basically it's the health<br/>8 department's food safety recommendations?<br/>9 A. Yes.<br/>10 Q. Okay. Let's take a break.<br/>11 That does get us through all of your work<br/>12 history until Cracker Barrel, right?<br/>13 A. Yes.<br/>14 MS. BUSBY: All right. We'll<br/>15 take a break and we'll start back up<br/>16 there.<br/>17 (Whereupon, a brief recess<br/>18 was taken.)<br/>19 Q. Okay. Right before we took<br/>20 our break, I asked you if you had ever<br/>21 been terminated and you said no. Have<br/>22 you ever been asked to resign in lieu of<br/>23 termination?</p> | <p style="text-align: right;">Page 75</p> <p>1 A. I think it's titled<br/>2 Deposition Tape.<br/>3 Q. A video?<br/>4 A. Yes.<br/>5 Q. Okay. How to give a<br/>6 deposition video?<br/>7 A. No. To -- just wanting to<br/>8 say you must be honest, make sure you<br/>9 answer all the questions to the best of<br/>10 your ability. That's pretty much it.<br/>11 Q. Well, how long did the tape<br/>12 last?<br/>13 A. A few minutes, four minutes<br/>14 maybe.<br/>15 Q. Where did you watch it?<br/>16 A. At the attorneys' office.<br/>17 Q. Which attorney?<br/>18 A. Breedlove.<br/>19 Q. In Georgia?<br/>20 A. Yes.<br/>21 Q. You met with your attorneys,<br/>22 I take it?<br/>23 A. Yes.</p>                                                                                                                                                                      |
| <p style="text-align: right;">Page 74</p> <p>1 A. No.<br/>2 Q. Have you ever gotten in<br/>3 trouble at any of your employers for<br/>4 falsifying any type of food costs?<br/>5 A. No.<br/>6 Q. Falsifying any kind of<br/>7 scheduling?<br/>8 A. No.<br/>9 Q. Saying that you were<br/>10 somewhere that you weren't?<br/>11 A. No.<br/>12 Q. Do your parents live in<br/>13 Virginia?<br/>14 A. My parents are deceased.<br/>15 Q. Do you have any brothers or<br/>16 sisters?<br/>17 A. Yes.<br/>18 Q. Where do they live?<br/>19 A. Virginia.<br/>20 Q. As part of preparation for<br/>21 your deposition, what did you review?<br/>22 A. A tape.<br/>23 Q. What kind of tape?</p>                                                                                                                                                                                                               | <p style="text-align: right;">Page 76</p> <p>1 Q. Did you review any documents?<br/>2 A. No.<br/>3 Q. You gathered up documents to<br/>4 give to your attorneys to produce to us<br/>5 in this case; is that right?<br/>6 A. Yes.<br/>7 Q. All right. Do you have any<br/>8 documents that have not been produced?<br/>9 A. No.<br/>10 Q. In the pile of documents that<br/>11 you produced to us, there was a lot of<br/>12 employment records of other people.<br/>13 Where did you get those?<br/>14 A. I don't understand the<br/>15 question.<br/>16 Q. Well, in the documents that<br/>17 you gave to your attorneys that your<br/>18 attorneys gave to us, you had some<br/>19 disciplinary forms that you had filled<br/>20 out on people who had worked for you<br/>21 while you were at Cracker Barrel; is that<br/>22 right?<br/>23 A. I don't recall all the</p> |

19 (Pages 73 to 76)

## FREEDOM COURT REPORTING

| Page 77                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Page 79                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <p>1 documents that I submitted.</p> <p>2 <b>Q. All right. There's a pile of</b></p> <p>3 <b>documents this thick (indicating) that</b></p> <p>4 <b>your attorneys gave to us that I take it</b></p> <p>5 <b>that you gave to them to produce to us;</b></p> <p>6 <b>is that right?</b></p> <p>7 A. I'm not sure what all the</p> <p>8 documents are that you all received.</p> <p>9 <b>Q. All right. Well, I have two</b></p> <p>10 <b>hundred and sixty-nine pages of documents</b></p> <p>11 <b>that were produced, and included in those</b></p> <p>12 <b>documents were evaluations and</b></p> <p>13 <b>disciplinary counseling reports that were</b></p> <p>14 <b>for people other than you.</b></p> <p>15 <b>Brian Thompson. Do you</b></p> <p>16 <b>recognize his name?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. All right. Who is he?</b></p> <p>19 A. Brian Thompson was an</p> <p>20 associate manager for Cracker Barrel.</p> <p>21 <b>Q. And it appears that you have</b></p> <p>22 <b>given him a written counseling that you</b></p> <p>23 <b>signed on -- somewhere between June 25th</b></p> | <p>1 <b>piece of information about that person,</b></p> <p>2 <b>whoever it is; is that right?</b></p> <p>3 A. That's correct.</p> <p>4 <b>Q. And you're telling me it was</b></p> <p>5 <b>your practice to keep a personal copy of</b></p> <p>6 <b>them yourself?</b></p> <p>7 A. No, ma'am. It was one that</p> <p>8 was issued, and when I left from there, I</p> <p>9 surrendered all the papers that I had.</p> <p>10 So anything that I had that pertained to</p> <p>11 Cracker Barrel I was asked to make sure I</p> <p>12 surrendered, which I did.</p> <p>13 <b>Q. When you say surrendered, you</b></p> <p>14 <b>mean gave it back to Cracker Barrel?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. All right. Well, then that</b></p> <p>17 <b>gets me back to my question. These</b></p> <p>18 <b>documents were produced by you to us. So</b></p> <p>19 <b>apparently you still had them in your</b></p> <p>20 <b>possession?</b></p> <p>21 A. When I was asked to return</p> <p>22 the documents to Cracker Barrel, my</p> <p>23 attorneys asked me to give them any and</p>                                                                |
| Page 78                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Page 80                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>1 <b>of '05 and 7/12 of '05.</b></p> <p>2 A. I'm not sure of the dates.</p> <p>3 <b>Q. Well, my question really is:</b></p> <p>4 <b>What was this document doing in your</b></p> <p>5 <b>possession?</b></p> <p>6 A. If there was a document that</p> <p>7 was issued while employed there, it was</p> <p>8 probably the copy for my files.</p> <p>9 <b>Q. When you say your files, what</b></p> <p>10 <b>kind of files did you have?</b></p> <p>11 A. Any files, awards,</p> <p>12 incentives, anything that we used for</p> <p>13 employees.</p> <p>14 <b>Q. Okay. Well, when you do a</b></p> <p>15 <b>counseling report on somebody, is it --</b></p> <p>16 <b>you're supposed to go over it with them,</b></p> <p>17 <b>right?</b></p> <p>18 A. That's correct.</p> <p>19 <b>Q. Then it goes to their</b></p> <p>20 <b>personnel file; is that right?</b></p> <p>21 A. A copy goes to the personnel</p> <p>22 file.</p> <p>23 <b>Q. And this is a confidential</b></p>                                                                                                                              | <p>1 everything that I had that belonged to</p> <p>2 Cracker Barrel. And I went home and went</p> <p>3 through everything that I thought may</p> <p>4 have anything that pertained to Cracker</p> <p>5 Barrel and made sure I surrendered it.</p> <p>6 <b>Q. When you say you surrendered</b></p> <p>7 <b>it, you surrendered it to your lawyers?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. My question was a little bit</b></p> <p>10 <b>different than that. Before your lawyers</b></p> <p>11 <b>asked them to give -- before your lawyers</b></p> <p>12 <b>asked you to give them a copy of all your</b></p> <p>13 <b>documentation related to Cracker Barrel,</b></p> <p>14 <b>what were you doing with it in your</b></p> <p>15 <b>possession?</b></p> <p>16 A. It was to Rich Alexander, who</p> <p>17 was a direct manager, who was not local</p> <p>18 in our market. So any documentation that</p> <p>19 we had, we would always pass on to Rich.</p> <p>20 And apparently by the time my termination</p> <p>21 came, he had not come to get the</p> <p>22 documentation, because anything like that</p> <p>23 was always given to Rich.</p> |

20 (Pages 77 to 80)

# FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 81</p> <p>1 <b>Q. What do you mean hadn't come</b><br/> 2 <b>to get it, come where?</b><br/> 3 A. To Montgomery.<br/> 4 <b>Q. To the store?</b><br/> 5 A. Yes.<br/> 6 <b>Q. Well, I understand that. So</b><br/> 7 <b>my question is: When you were</b><br/> 8 <b>terminated, it should have been at the</b><br/> 9 <b>store, right, not in your possession?</b><br/> 10 A. When I was terminated, Rich<br/> 11 was not at the store.<br/> 12 <b>Q. So you took all of the</b><br/> 13 <b>company records at the store that day</b><br/> 14 <b>with you?</b><br/> 15 A. No.<br/> 16 <b>Q. Well, it's a violation of the</b><br/> 17 <b>company policy for you to take other</b><br/> 18 <b>people's employee records, correct?</b><br/> 19 A. I never took the employees'<br/> 20 records.<br/> 21 <b>Q. Well, you have them because</b><br/> 22 <b>you produced them to us, correct?</b><br/> 23 A. No. Those records were to be</p>                                                                      | <p style="text-align: right;">Page 83</p> <p>1 A. That's correct.<br/> 2 <b>Q. Okay. My question to you is:</b><br/> 3 <b>You have copies of people's personal</b><br/> 4 <b>employee records at your house?</b><br/> 5 A. They were not at my house.<br/> 6 <b>Q. Where were they?</b><br/> 7 A. They were in a briefcase,<br/> 8 which Rich normally has me to meet him<br/> 9 off site sometimes. We never always met<br/> 10 at the restaurant.<br/> 11 <b>Q. Okay. So you had a briefcase</b><br/> 12 <b>full of stuff in your car or at home or</b><br/> 13 <b>somewhere?</b><br/> 14 A. No, ma'am, I didn't have a<br/> 15 briefcase full of stuff. It would be<br/> 16 anything that needed to be -- that Rich<br/> 17 requested that he get a copy of.<br/> 18 <b>Q. Well, why would you have a</b><br/> 19 <b>copy of Ashley Moore's employee</b><br/> 20 <b>counseling report that you did not</b><br/> 21 <b>participate in?</b><br/> 22 A. Again, if he asked --<br/> 23 anything that he asked for, if we meet, I</p>                                                  |
| <p style="text-align: right;">Page 82</p> <p>1 surrendered, and I was terminated before<br/> 2 he took those out of my possession. So I<br/> 3 surrendered them.<br/> 4 <b>Q. Well, you didn't surrender</b><br/> 5 <b>them until your lawyers asked for them,</b><br/> 6 <b>right?</b><br/> 7 A. I wasn't aware that it was in<br/> 8 my possession until I searched for them.<br/> 9 So I searched for anything.<br/> 10 <b>Q. Why would you take some</b><br/> 11 <b>employee's counseling record that had</b><br/> 12 <b>already been signed by that employee</b><br/> 13 <b>months before your termination to your</b><br/> 14 <b>house?</b><br/> 15 A. Again, upon my termination, I<br/> 16 walked through and Rich was not -- he was<br/> 17 not there to collect anything, and<br/> 18 anything that we have, we surrender to<br/> 19 him.<br/> 20 <b>Q. Well, I understand that while</b><br/> 21 <b>you're in the store, if the district</b><br/> 22 <b>manager comes, you give him</b><br/> 23 <b>documentation, correct?</b></p> | <p style="text-align: right;">Page 84</p> <p>1 just give the documentation for his<br/> 2 files.<br/> 3 <b>Q. Seems to me, if Rich did the</b><br/> 4 <b>employee counseling report of Ashley</b><br/> 5 <b>Moore, he would have it, wouldn't you</b><br/> 6 <b>think?</b><br/> 7 A. I'm not sure.<br/> 8 <b>Q. All right. So just so we're</b><br/> 9 <b>clear about this, under oath you're</b><br/> 10 <b>telling me that the reason that you had</b><br/> 11 <b>the documents in your possession that you</b><br/> 12 <b>have given to your lawyers to surrender</b><br/> 13 <b>to Cracker Barrel is because you had them</b><br/> 14 <b>in a briefcase that you were meant to</b><br/> 15 <b>give to Rich Alexander?</b><br/> 16 A. No. The documents were<br/> 17 documents that he requested copies of and<br/> 18 he never got.<br/> 19 <b>Q. All right. So your testimony</b><br/> 20 <b>is that Rich has requested copies of the</b><br/> 21 <b>documents that you had in your possession</b><br/> 22 <b>that you were able to then produce?</b><br/> 23 A. I'm sorry?</p> |

21 (Pages 81 to 84)

## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 85</p> <p>1 <b>Q. Your testimony is is the</b><br/> 2 <b>reason that you have these personnel</b><br/> 3 <b>records is because Rich requested a copy</b><br/> 4 <b>of them and you kept them in a briefcase</b><br/> 5 <b>but the two of you never got around to</b><br/> 6 <b>meeting for you to give them to him?</b><br/> 7 MS. YORK: I'm going to<br/> 8 object because it's been asked and he's<br/> 9 answered it six to seven times.<br/> 10 MS. BUSBY: Well,<br/> 11 inconsistently.<br/> 12 MS. YORK: He's answered the<br/> 13 question.<br/> 14 MS. BUSBY: Are you<br/> 15 instructing him not to answer?<br/> 16 MS. YORK: I'm objecting<br/> 17 because he's asked and answered. You<br/> 18 said it's inconsistent, but you've asked<br/> 19 it five different ways.<br/> 20 MS. BUSBY: I'll continue to<br/> 21 ask until I'm satisfied with the answer.<br/> 22 <b>Q. (By Ms. Busby) The reason</b><br/> 23 <b>you have other people's personnel records</b></p> | <p style="text-align: right;">Page 87</p> <p>1 copy of something, I look for it. And if<br/> 2 it's there, I make sure I get it to him.<br/> 3 <b>Q. All right. So you look for</b><br/> 4 <b>it. You get it, and apparently you put</b><br/> 5 <b>it in a briefcase that you had in your</b><br/> 6 <b>possession when you were terminated?</b><br/> 7 A. Yes.<br/> 8 <b>Q. All right. And where was</b><br/> 9 <b>this briefcase located?</b><br/> 10 A. The briefcase was a locked<br/> 11 case that stayed in the main office under<br/> 12 shelving.<br/> 13 <b>Q. Well, how did the briefcase</b><br/> 14 <b>come to be in your possession after you</b><br/> 15 <b>were terminated?</b><br/> 16 A. The briefcase was one of the<br/> 17 things that actually was handed to me<br/> 18 that was something that I carried that<br/> 19 was given to me upon termination.<br/> 20 <b>Q. It was your personal</b><br/> 21 <b>briefcase?</b><br/> 22 A. The briefcase itself was one<br/> 23 that I purchased, but I purchased with my</p> |
| <p style="text-align: right;">Page 86</p> <p>1 <b>in your possession that you gave to your</b><br/> 2 <b>lawyer is because you made copies of</b><br/> 3 <b>them?</b><br/> 4 A. No.<br/> 5 <b>Q. Okay. Then we'll start</b><br/> 6 <b>over. Why do you have other people's</b><br/> 7 <b>personnel records in your possession?</b><br/> 8 MS. YORK: Asked and<br/> 9 answered.<br/> 10 <b>Q. Go ahead.</b><br/> 11 A. I've already testified to why<br/> 12 I have them, upon his request.<br/> 13 <b>Q. Well, who made the copies?</b><br/> 14 A. I don't know.<br/> 15 <b>Q. All right. So some unknown</b><br/> 16 <b>person made copies and gave them to you</b><br/> 17 <b>for you to give to Rich? That's your</b><br/> 18 <b>testimony?</b><br/> 19 A. No, ma'am. At the time, as<br/> 20 you stated, that I didn't even<br/> 21 participate in one of them, I don't know<br/> 22 how that copy was produced. I just know<br/> 23 that when he requested that he needs a</p>                                 | <p style="text-align: right;">Page 88</p> <p>1 own funds, but it was one that I kept<br/> 2 there because it had a lock on it.<br/> 3 <b>Q. All right. So who handed you</b><br/> 4 <b>the briefcase upon your termination?</b><br/> 5 A. Rich Alexander.<br/> 6 <b>Q. I thought you told me just a</b><br/> 7 <b>minute ago he wasn't there, which is why</b><br/> 8 <b>you didn't give him the documents?</b><br/> 9 A. No, ma'am. He never came<br/> 10 before the time that I was terminated to<br/> 11 retrieve them.<br/> 12 <b>Q. All right. So you were</b><br/> 13 <b>terminated, and Rich Alexander was there?</b><br/> 14 A. That's correct.<br/> 15 <b>Q. Yet you took the briefcase</b><br/> 16 <b>with these documents with you?</b><br/> 17 A. When I was terminated, I was<br/> 18 handed the briefcase and told my services<br/> 19 were no longer needed, and I left<br/> 20 immediately.<br/> 21 <b>Q. All right. When did you look</b><br/> 22 <b>in the briefcase?</b><br/> 23 A. When I was asked if I had any</p>     |

22 (Pages 85 to 88)

## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 89</p> <p>1 documentation or anything belonging to<br/>2 Cracker Barrel, to go through everything,<br/>3 and anything and everything that I had to<br/>4 make sure I turned it in.<br/>5 <b>Q. All right. So you never</b><br/>6 <b>looked in the briefcase from the day you</b><br/>7 <b>were terminated until --</b><br/>8 A. That's correct.<br/>9 <b>Q. When?</b><br/>10 A. I'm not sure exactly when.<br/>11 <b>Q. Well, when did you hire a</b><br/>12 <b>lawyer?</b><br/>13 A. I'm not sure of the exact<br/>14 date.<br/>15 <b>Q. Within a week of your</b><br/>16 <b>termination?</b><br/>17 A. No.<br/>18 <b>Q. Within a month?</b><br/>19 A. No.<br/>20 <b>Q. Within two months?</b><br/>21 A. I'm not sure exactly when.<br/>22 <b>Q. All right. Was Mr. Breedlove</b><br/>23 <b>the first lawyer you hired?</b></p>                                                      | <p style="text-align: right;">Page 91</p> <p>1 A. Honestly, with all the<br/>2 contacts I made, I'm not sure how I came<br/>3 across Mr. Breedlove.<br/>4 <b>Q. You may have just come across</b><br/>5 <b>him in the phone book?</b><br/>6 A. Yes. I'm not sure, again,<br/>7 how I came across Mr. Breedlove.<br/>8 <b>Q. So once you get an attorney,</b><br/>9 <b>Mr. Breedlove's office, sometime</b><br/>10 <b>thereafter they asked you to give them</b><br/>11 <b>any documents you have related to Cracker</b><br/>12 <b>Barrel?</b><br/>13 A. Yes.<br/>14 <b>Q. And it is at that time that</b><br/>15 <b>you look in the briefcase?</b><br/>16 A. I looked through numerous of<br/>17 things, but yes.<br/>18 <b>Q. All right. What other things</b><br/>19 <b>did you look through?</b><br/>20 A. Any old gym bag I had. He<br/>21 said do a one hundred percent search of<br/>22 anything and anything that was belonging<br/>23 to Cracker Barrel --</p>                                                                                                                                       |
| <p style="text-align: right;">Page 90</p> <p>1 A. Yes.<br/>2 <b>Q. Okay. Did you know him prior</b><br/>3 <b>to this for any other legal reason?</b><br/>4 A. No.<br/>5 <b>Q. How did you come to know Mr.</b><br/>6 <b>Breedlove?</b><br/>7 A. I searched through phone<br/>8 books, and I just called around and asked<br/>9 people if there was anyone who does<br/>10 employee rights.<br/>11 <b>Q. What do you mean you called</b><br/>12 <b>-- you called around lawyers or you</b><br/>13 <b>called around friends or what are you</b><br/>14 <b>talking about?</b><br/>15 A. I called everybody. Through<br/>16 the phone book. I called other<br/>17 attorneys. I asked friends. I asked the<br/>18 EEOC. I asked numerous of people.<br/>19 <b>Q. Did the EEOC recommend Mr.</b><br/>20 <b>Breedlove?</b><br/>21 A. No, they did not.<br/>22 <b>Q. Did a friend recommend Mr.</b><br/>23 <b>Breedlove?</b></p> | <p style="text-align: right;">Page 92</p> <p>1 <b>Q. All right. So my question</b><br/>2 <b>was: Where did you look in and you've</b><br/>3 <b>now said a briefcase and a gym bag?</b><br/>4 A. I looked through everything.<br/>5 I went back to my vehicle just to make<br/>6 sure that there was nothing that<br/>7 pertained to Cracker Barrel, and I<br/>8 searched throughout my own personal<br/>9 belongings just to make sure I had<br/>10 nothing that belonged to Cracker Barrel.<br/>11 <b>Q. Did you keep file folders?</b><br/>12 A. No. They just told me to do<br/>13 an extensive search, which I did.<br/>14 <b>Q. All right. Let's do it this</b><br/>15 <b>way. This might be the easiest way to do</b><br/>16 <b>it then. The first document I have in</b><br/>17 <b>what you've produced is the employee open</b><br/>18 <b>door report. Tell me what that is.</b><br/>19 A. It's the policies and<br/>20 procedures that Cracker Barrel has<br/>21 established for if any complaint of<br/>22 discrimination, harassment, or anything<br/>23 of that nature is brought before the</p> |

23 (Pages 89 to 92)



## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 93</p> <p>1 general manager and/or a member of<br/>2 management, that's the report that we<br/>3 complete.<br/>4 <b>Q. So this is the company's</b><br/>5 <b>policy that if there is a complaint of</b><br/>6 <b>some nature, you fill out a report, send</b><br/>7 <b>it to employee relations, collect</b><br/>8 <b>statements, and determine if any</b><br/>9 <b>disciplinary counselings need to be</b><br/>10 <b>completed?</b><br/>11 A. Also a copy of that report<br/>12 goes to the district manager, and I don't<br/>13 know what they do with it.<br/>14 <b>Q. All right. The next thing</b><br/>15 <b>you have is the pleasing people</b><br/>16 <b>statement, which is what?</b><br/>17 A. I'm not one hundred percent<br/>18 sure, because they have numerous of<br/>19 documents with pleasing people on it.<br/>20 <b>Q. Well, take a look at that.</b><br/>21 <b>That's document two in the production.</b><br/>22 A. This is a form explaining the<br/>23 equal employment opportunity policy, the</p> | <p style="text-align: right;">Page 95</p> <p>1 <b>documents are; is that correct?</b><br/>2 A. These are earning statements,<br/>3 yes.<br/>4 <b>Q. Okay. And then you have</b><br/>5 <b>produced some U-Haul records. What's the</b><br/>6 <b>purpose of producing the U-Haul receipt</b><br/>7 <b>for ninety-three dollars and seventy-four</b><br/>8 <b>cents?</b><br/>9 A. It was a documentation that<br/>10 was in my possession that pertained to<br/>11 Cracker Barrel.<br/>12 <b>Q. And how does it pertain to</b><br/>13 <b>Cracker Barrel?</b><br/>14 A. I'm not sure without seeing<br/>15 if it was involved in a relocation or if<br/>16 it was involving transporting something<br/>17 or --<br/>18 <b>Q. These are documents number</b><br/>19 <b>six and seven.</b><br/>20 A. This is documentation for a<br/>21 U-Haul truck.<br/>22 <b>Q. Well, is it something that</b><br/>23 <b>you were doing for yourself or doing for</b></p>                             |
| <p style="text-align: right;">Page 94</p> <p>1 harassment discrimination policy, and the<br/>2 open door policy.<br/>3 <b>Q. Those are the policies that</b><br/>4 <b>in your management and training you would</b><br/>5 <b>have been trained on, correct?</b><br/>6 A. Yes.<br/>7 <b>Q. And agreed to abide by,</b><br/>8 <b>correct?</b><br/>9 A. Yes.<br/>10 <b>Q. And that apparently is a copy</b><br/>11 <b>you kept for yourself, but you would</b><br/>12 <b>execute a copy as part of your</b><br/>13 <b>employment; is that right?</b><br/>14 A. Yes.<br/>15 <b>Q. Okay. The next several</b><br/>16 <b>documents from your production appear to</b><br/>17 <b>me to be an example of your earnings; is</b><br/>18 <b>that correct?</b><br/>19 A. I'm not sure.<br/>20 <b>Q. You've produced three sheets</b><br/>21 <b>that show your current earnings and a</b><br/>22 <b>bonus, if any, that was paid, I believe,</b><br/>23 <b>is what the purpose of these three</b></p>                                                                    | <p style="text-align: right;">Page 96</p> <p>1 <b>Cracker Barrel?</b><br/>2 A. If it's Cracker Barrel's<br/>3 authorization, it's Cracker Barrel.<br/>4 Can you be more specific when<br/>5 you ask for myself or Cracker Barrel?<br/>6 <b>Q. Well, I'm just asking. You</b><br/>7 <b>produced it, and you say it pertains to</b><br/>8 <b>this case in some manner. I just want to</b><br/>9 <b>know how?</b><br/>10 A. When you ask for myself, it<br/>11 was for relocating for Cracker Barrel.<br/>12 <b>Q. That's what I'm asking.</b><br/>13 A. Okay.<br/>14 <b>Q. So you showed it because this</b><br/>15 <b>is the company paid for the price of some</b><br/>16 <b>boxes and tape and the truck for you to</b><br/>17 <b>move?</b><br/>18 A. Yes.<br/>19 <b>Q. Okay. And it looks -- do you</b><br/>20 <b>recollect when that was?</b><br/>21 A. No. And I noticed that's not<br/>22 dated, so I can't tell you specifically<br/>23 for which move or at which time.</p> |

24 (Pages 93 to 96)



## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 97</p> <p>1 Q. Well, at the bottom it says<br/>2 7/19/05. I don't know if that's just the<br/>3 print date or what that is.<br/>4 A. I'm not sure either.<br/>5 Q. Okay. All right. Then the<br/>6 next thing I have is Cracker Barrel --<br/>7 that you produced to Cracker Barrel,<br/>8 excuse me, was document number eight.<br/>9 Tell me what that is.<br/>10 A. It's a gift card I received<br/>11 from three of the employees with Cracker<br/>12 Barrel from a death that I had in the<br/>13 family. They all got together and bought<br/>14 flowers for the grave.<br/>15 Q. Okay. When was this?<br/>16 A. I'm not sure because I've had<br/>17 three deaths during that time frame, and<br/>18 I'm not sure which one it was from. But<br/>19 I know that's what it was for.<br/>20 Q. When you say three deaths,<br/>21 during that time frame?<br/>22 A. During my tenancy with<br/>23 Cracker Barrel.</p> | <p style="text-align: right;">Page 99</p> <p>1 Thompson.<br/>2 Q. Where did she live?<br/>3 A. In Athens, Georgia.<br/>4 Q. Okay. Do you remember when<br/>5 she died?<br/>6 A. Not the time frame, no.<br/>7 Q. All right. And who else?<br/>8 A. And -- no, my mother was<br/>9 prior to Cracker Barrel. It was just<br/>10 two. My mother was prior to Cracker<br/>11 Barrel.<br/>12 Q. So when you said three, you<br/>13 were talking about your mother, but she<br/>14 was before that?<br/>15 A. It was prior to Cracker<br/>16 Barrel, yes.<br/>17 Q. All right. So you produced<br/>18 this because this is a condolence flowers<br/>19 for either your Aunt Viola or your Aunt<br/>20 Sherry?<br/>21 A. Correct.<br/>22 Q. Now, did you attend both of<br/>23 the funerals while you were employed?</p> |
| <p style="text-align: right;">Page 98</p> <p>1 Q. During the time you were<br/>2 employed with Cracker Barrel?<br/>3 A. Yes.<br/>4 Q. Who were the deaths?<br/>5 A. The death was my aunt.<br/>6 Q. What's her name?<br/>7 A. Viola, V-i-o-l-a, Dunbar.<br/>8 Q. D-u-n-b-a-r?<br/>9 A. Yes.<br/>10 Q. How did you say her first<br/>11 name?<br/>12 A. Viola.<br/>13 Q. Where did she live?<br/>14 A. South Carolina.<br/>15 Q. When did she die?<br/>16 A. I don't know the exact date.<br/>17 Q. Well, approximately. I mean,<br/>18 which year?<br/>19 A. It's been a couple of years.<br/>20 I'm not sure.<br/>21 Q. Okay. Who are the other<br/>22 deaths?<br/>23 A. It was another aunt, Sherry</p>                                                                                                                                                                                                                                                    | <p style="text-align: right;">Page 100</p> <p>1 A. Yes.<br/>2 Q. And one of them you attended<br/>3 was in South Carolina, and one of them<br/>4 was in Athens, Georgia?<br/>5 A. Yes.<br/>6 Q. All right. This came from a<br/>7 Gardendale florist.<br/>8 A. I was at the Gardendale<br/>9 location.<br/>10 Q. Okay. When both of these<br/>11 women passed or --<br/>12 A. I'm not sure.<br/>13 Q. Okay. So you don't know<br/>14 which one this relates to?<br/>15 A. No.<br/>16 Q. All right. Then you appear<br/>17 to have some other Cracker Barrel<br/>18 policies, public accommodation statements<br/>19 and other information that you've<br/>20 produced. And then there's a paper,<br/>21 number thirteen, that says evaluations<br/>22 before Gardendale. Is that your<br/>23 handwriting?</p>     |

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# FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 101</p> <p>1 A. No.</p> <p>2 Q. And so do you have copies of</p> <p>3 your performance evaluations, I take it?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And so then you</p> <p>6 produced some evaluations. And then the</p> <p>7 next thing you have is your EEOC charge;</p> <p>8 is that right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. We're going to talk</p> <p>11 about that. So this is a good place to</p> <p>12 start.</p> <p>13 All right. You started at</p> <p>14 Cracker Barrel in '02, right?</p> <p>15 A. Yes.</p> <p>16 Q. And you went in the</p> <p>17 management-in-training program; is that</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. And you were assigned the</p> <p>21 position of associate manager?</p> <p>22 A. Yes.</p> <p>23 Q. All right. Where was that?</p> | <p style="text-align: right;">Page 103</p> <p>1 Q. So do you think he's still in</p> <p>2 La Grange?</p> <p>3 A. I don't know.</p> <p>4 Q. Okay. Who was the district</p> <p>5 manager?</p> <p>6 A. George Katsoudas.</p> <p>7 Q. While you were in La Grange</p> <p>8 he was the district manager?</p> <p>9 A. No, I wasn't in La Grange. I</p> <p>10 was in Athens.</p> <p>11 Q. While you were in Athens he</p> <p>12 was the district manager?</p> <p>13 A. Yes.</p> <p>14 Q. Was he the district manager</p> <p>15 the entire time you were at the Athens</p> <p>16 location?</p> <p>17 A. Yes.</p> <p>18 Q. Is he still with Cracker</p> <p>19 Barrel?</p> <p>20 A. I don't know.</p> <p>21 Q. When is the last time you</p> <p>22 talked to him?</p> <p>23 A. It's been years.</p>                                                                                                                                                                                                |
| <p style="text-align: right;">Page 102</p> <p>1 A. Athens, Georgia.</p> <p>2 Q. All right. And who was your</p> <p>3 manager?</p> <p>4 A. Tom Speziale.</p> <p>5 Q. Spell that last name.</p> <p>6 A. S-p-e-z-i-a-l-e.</p> <p>7 Q. All right. Was he your</p> <p>8 general manager the whole time you were</p> <p>9 in the Athens location?</p> <p>10 A. Yes.</p> <p>11 Q. Is he still with Cracker</p> <p>12 Barrel?</p> <p>13 A. Yes.</p> <p>14 Q. Where is he located?</p> <p>15 A. I'm not sure. I know he's</p> <p>16 still with the company, but he's not in</p> <p>17 Athens anymore.</p> <p>18 Q. When is the last time you've</p> <p>19 talked to him?</p> <p>20 A. It's been almost a year, year</p> <p>21 and a half.</p> <p>22 Q. Where was he at that time?</p> <p>23 A. La Grange, Georgia.</p>               | <p style="text-align: right;">Page 104</p> <p>1 Q. So you just don't have any</p> <p>2 idea about him?</p> <p>3 A. No.</p> <p>4 Q. All right. How long were you</p> <p>5 in the Athens location?</p> <p>6 A. It's difficult to answer</p> <p>7 that because they had me travel to other</p> <p>8 stores even though Athens was my parent</p> <p>9 restaurant.</p> <p>10 Q. So you would go assist if</p> <p>11 there were openings in other stores or if</p> <p>12 a store was missing management?</p> <p>13 A. No. I went to assist if</p> <p>14 there was food cost issues with other</p> <p>15 stores or training issues.</p> <p>16 Q. And tell me what you mean by</p> <p>17 that.</p> <p>18 A. They had an issue with food</p> <p>19 cost and training in Cordele, Georgia.</p> <p>20 Though I was assigned to Athens, they</p> <p>21 sent me to Cordele to evaluate the</p> <p>22 training program, evaluate the food cost</p> <p>23 program, and then render a written report</p> |

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(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 105</p> <p>1 to their district manager.</p> <p>2 <b>Q. And who was that district</b></p> <p>3 <b>manager?</b></p> <p>4 A. I don't recall his name. His</p> <p>5 first name is Matt. I don't recall his</p> <p>6 last name.</p> <p>7 <b>Q. Did you do a written report?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. Did you do -- did you keep a</b></p> <p>10 <b>copy of it?</b></p> <p>11 A. No. It was given to Matt.</p> <p>12 <b>Q. Any other stores that you</b></p> <p>13 <b>went to while you were assigned to</b></p> <p>14 <b>Athens?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. All right. Which ones?</b></p> <p>17 A. Conyers, Georgia; Kennesaw,</p> <p>18 Georgia; Canton, Georgia; Commerce,</p> <p>19 Georgia. And that's all that I can</p> <p>20 recall.</p> <p>21 <b>Q. And what would you do while</b></p> <p>22 <b>you were going to visit those stores?</b></p> <p>23 A. The same, just review their</p>                                                                                           | <p style="text-align: right;">Page 107</p> <p>1 <b>talked to him?</b></p> <p>2 A. It's been years.</p> <p>3 <b>Q. Okay. Was he in Georgia?</b></p> <p>4 <b>Where was his office, Georgia?</b></p> <p>5 A. We had the entire region.</p> <p>6 His office was in Tennessee, but his</p> <p>7 field was the southern region.</p> <p>8 <b>Q. Okay. So Ron Phillips would</b></p> <p>9 <b>give you temporary assignments at other</b></p> <p>10 <b>locations?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. All right. So during the</b></p> <p>13 <b>time you were assigned to Athens, is it</b></p> <p>14 <b>your testimony that you were in Athens in</b></p> <p>15 <b>other stores more than you were actually</b></p> <p>16 <b>in the Athens store?</b></p> <p>17 A. No. I was physically in the</p> <p>18 Athens store the majority of my associate</p> <p>19 management time being assigned to Athens,</p> <p>20 but towards the end when I was getting</p> <p>21 promoted to senior associate manager, I</p> <p>22 started going to the field. It was Ron's</p> <p>23 assignments just to go to other fields</p> |
| <p style="text-align: right;">Page 106</p> <p>1 exception reports, review their food</p> <p>2 costs, and just help out wherever needed</p> <p>3 once that was done until I went to the</p> <p>4 next restaurant.</p> <p>5 <b>Q. So were you acting in the</b></p> <p>6 <b>role of a visiting associate manager?</b></p> <p>7 A. Well, I was there -- my</p> <p>8 instructions there were to review the</p> <p>9 reports, and then afterwards until I</p> <p>10 received new instructions, yes, I would</p> <p>11 fill in where needed.</p> <p>12 <b>Q. Who would give you these</b></p> <p>13 <b>instructions?</b></p> <p>14 A. Ron Phillips. He's a</p> <p>15 regional vice-president.</p> <p>16 <b>Q. Okay. Was Ron Phillips the</b></p> <p>17 <b>regional vice-president the entire time</b></p> <p>18 <b>you were employed with Cracker Barrel?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. Okay. Is he still employed</b></p> <p>21 <b>with Cracker Barrel?</b></p> <p>22 A. I don't know.</p> <p>23 <b>Q. When is the last time you've</b></p> | <p style="text-align: right;">Page 108</p> <p>1 and review and give feedback and things</p> <p>2 of that nature towards me being promoted</p> <p>3 from associate to senior associate.</p> <p>4 <b>Q. Okay. So you started in the</b></p> <p>5 <b>training. You became an associate</b></p> <p>6 <b>manager assigned to Athens, and you were</b></p> <p>7 <b>promoted to senior associate by whom and</b></p> <p>8 <b>at what store?</b></p> <p>9 A. By Ron Phillips and Lithia</p> <p>10 Springs, Georgia.</p> <p>11 <b>Q. Ron Phillips did the</b></p> <p>12 <b>promotion in Lithia Springs, Georgia?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. That promotion has to be</b></p> <p>15 <b>recommended by somebody and approved by</b></p> <p>16 <b>Ron Phillips; is that right?</b></p> <p>17 A. I don't know how it worked.</p> <p>18 It was a regional vice-president, so I</p> <p>19 don't know how it worked.</p> <p>20 <b>Q. Your district manager would</b></p> <p>21 <b>have had to have recommended you; is that</b></p> <p>22 <b>right?</b></p> <p>23 A. There should have been</p>                  |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 109</p> <p>1 feedback, yes. I mean, just natural,<br/>2 yes.<br/>3 <b>Q. All right. Now, you have</b><br/>4 <b>produced some of these evaluations, and</b><br/>5 <b>the first one is done by the gentleman</b><br/>6 <b>you mentioned, Tom Speziale; is that</b><br/>7 <b>right?</b><br/>8 A. Yes.<br/>9 <b>Q. And this was an evaluation</b><br/>10 <b>when you were -- it's dated Evaluation 1</b><br/>11 <b>of 2004. So would you have been a senior</b><br/>12 <b>associate manager at this point?</b><br/>13 A. In 2004? No.<br/>14 <b>Q. What would you have been</b><br/>15 <b>then, associate?</b><br/>16 A. I'm not sure, but the form<br/>17 that you have should have the title on<br/>18 it.<br/>19 <b>Q. It just says Associate</b><br/>20 <b>Performance Evaluation?</b><br/>21 A. Okay. In 2004 I wasn't an<br/>22 associate.<br/>23 <b>Q. Well, that's what I'm asking.</b></p>                                                                  | <p style="text-align: right;">Page 111</p> <p>1 can cross or they can be individualized.<br/>2 You can be the food course manager as<br/>3 well as the labor manager. You're also<br/>4 responsible for training and developing<br/>5 the hourly employees.<br/>6 <b>Q. So does the general manager</b><br/>7 <b>determine what each individual associate</b><br/>8 <b>manager is going to be primarily</b><br/>9 <b>responsible for?</b><br/>10 A. Yes, yes.<br/>11 <b>Q. Okay. And then the general</b><br/>12 <b>manager is ultimately responsible to make</b><br/>13 <b>sure all of those things are handled</b><br/>14 <b>accordingly; is that right?</b><br/>15 A. Yes.<br/>16 <b>Q. Okay. So during your role as</b><br/>17 <b>an associate manager or a senior</b><br/>18 <b>associate manager, you may have been</b><br/>19 <b>responsible for specific tasks assigned</b><br/>20 <b>to you by whoever the general manager was</b><br/>21 <b>where you were located?</b><br/>22 A. Yes.<br/>23 <b>Q. Okay. And then whoever that</b></p>                                                   |
| <p style="text-align: right;">Page 110</p> <p>1 <b>What were you?</b><br/>2 A. In -- what's the date on it?<br/>3 <b>Q. It's Evaluation 1 of 2004.</b><br/>4 <b>I mean, that's how you produced it to</b><br/>5 <b>me. That's why I'm asking what that</b><br/>6 <b>means.</b><br/>7 A. During this evaluation<br/>8 period, there was no other GM that I was<br/>9 under where I had enough time to evaluate<br/>10 me other than Tom. I was physically<br/>11 under Rich Alexander, but I did not have<br/>12 enough time under Rich for him to<br/>13 evaluate me. So they went back to Tom to<br/>14 do the evaluation.<br/>15 <b>Q. Okay. But what was your</b><br/>16 <b>position in January of 2004?</b><br/>17 A. Associate, yes.<br/>18 <b>Q. All right. And then -- what</b><br/>19 <b>are the job duties of an associate</b><br/>20 <b>manager?</b><br/>21 A. Numerous daily operations,<br/>22 food costs, scheduling. Each associate<br/>23 is given areas of responsibility. They</p> | <p style="text-align: right;">Page 112</p> <p>1 general manager was is ultimately<br/>2 responsible for, I guess, the -- how the<br/>3 store does and how the employees perform<br/>4 and the associates perform?<br/>5 A. Yes.<br/>6 <b>Q. Okay. Then on 4/17/04,</b><br/>7 <b>you've produced to me document number --</b><br/>8 <b>that you've marked as 28, your individual</b><br/>9 <b>development program plan was to -- your</b><br/>10 <b>career development project was to work on</b><br/>11 <b>running the unit?</b><br/>12 A. Yes.<br/>13 <b>Q. Okay. And I guess what they</b><br/>14 <b>are saying is that -- that must be</b><br/>15 <b>related to where it's the developmental</b><br/>16 <b>needs? You've improved from your last</b><br/>17 <b>evaluation in labor management but you</b><br/>18 <b>have some more to go and you're going to</b><br/>19 <b>do this by putting the whole concept</b><br/>20 <b>together and working on running the</b><br/>21 <b>unit? Is that what it means by</b><br/>22 <b>developmental plan?</b><br/>23 A. It's just the -- prior to you</p> |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 113</p> <p>1 running the unit, any feedback that the<br/>2 general manager may have for areas that<br/>3 he may want you to concentrate on.<br/>4 Though you're running the unit actively,<br/>5 and not to be there physically there with<br/>6 you, and they give you projects to work<br/>7 on, and then they coach and teach you<br/>8 through any area that they think you need<br/>9 to work on just to improve, yes.</p> <p>10 <b>Q. And what they do for a while,</b><br/>11 <b>and I've seen this word as best I can</b><br/>12 <b>recall from reviewing the documents</b><br/>13 <b>you've produced --</b></p> <p>14 MS. YORK: Is this a question<br/>15 or are you just making a comment?</p> <p>16 MS. BUSBY: Well, if you<br/>17 won't be so rude as to interrupt me, I<br/>18 bet you can figure it out.</p> <p>19 MS. YORK: You said what they<br/>20 do, you didn't say I'm asking you what<br/>21 they do.</p> <p>22 <b>Q. (By Ms. Busby) What they do</b><br/>23 <b>from looking at the documents that I have</b></p> | <p style="text-align: right;">Page 115</p> <p>1 the area?</p> <p>2 A. Well, the coaching is<br/>3 continuance, and before you apply<br/>4 discipline, it's still based on<br/>5 knowledge. So I don't understand.</p> <p>6 <b>Q. Well, as an -- I'm just</b><br/>7 <b>reading here from the document that you</b><br/>8 <b>and I were looking at, Page 30. It says</b><br/>9 <b>that associate managers and senior</b><br/>10 <b>associate manager evaluations are</b><br/>11 <b>performed by the general manager and then</b><br/>12 <b>second level review is by the district</b><br/>13 <b>manager.</b></p> <p>14 A. That's the process, yes.</p> <p>15 <b>Q. Okay. So when you were an</b><br/>16 <b>associate manager and senior associate</b><br/>17 <b>manager, as you were during this time of</b><br/>18 <b>these evaluations that you've produced to</b><br/>19 <b>me, you would receive coaching, told</b><br/>20 <b>areas of improvement that you needed to</b><br/>21 <b>concentrate on on your evaluation, given</b><br/>22 <b>a development plan like we went over, and</b><br/>23 <b>during the time between that and the next</b></p> |
| <p style="text-align: right;">Page 114</p> <p>1 seen that you have produced is they --<br/>2 using your term, they coach you in<br/>3 improvement areas before you would get to<br/>4 any kind of what would be considered any<br/>5 type of disciplinary action; is that<br/>6 correct?</p> <p>7 A. I don't understand.</p> <p>8 <b>Q. You said that as you learn</b><br/>9 <b>and need areas of improvement, they coach</b><br/>10 <b>you and train you?</b></p> <p>11 A. The general managers?</p> <p>12 <b>Q. Yes.</b></p> <p>13 A. Yes. And district managers.</p> <p>14 <b>Q. If you are a general manager,</b><br/>15 <b>then the district manager does that,</b><br/>16 <b>correct?</b></p> <p>17 A. That's the process, yes.</p> <p>18 <b>Q. Okay. And the coaching and</b><br/>19 <b>teaching and developmental training</b><br/>20 <b>occurs prior to them getting to a point</b><br/>21 <b>where they think you've had an</b><br/>22 <b>opportunity to learn and therefore you</b><br/>23 <b>wouldn't want to discipline somebody in</b></p>                   | <p style="text-align: right;">Page 116</p> <p>1 review, you would receive the coaching<br/>2 and training?</p> <p>3 A. That's the process, yes.</p> <p>4 <b>Q. Okay. Well, did that occur</b><br/>5 <b>in your case?</b></p> <p>6 A. I can't say yes to that<br/>7 because there can be an area where they<br/>8 tell you that this is what you need to<br/>9 improve on, and you're just given a<br/>10 source to go and read and learn about and<br/>11 things of that nature. As a trainer, to<br/>12 me that's not a part of coaching, because<br/>13 there's no feedback process. So that's<br/>14 the process that is supposed to happen.</p> <p>15 <b>Q. Let me just ask this</b><br/>16 <b>question: As it relates to you, are you</b><br/>17 <b>referring to any specific incident?</b></p> <p>18 A. No, just the system itself.</p> <p>19 <b>Q. Okay. All right. So the</b><br/>20 <b>next document that -- that's the last</b><br/>21 <b>document that you produced was this</b><br/>22 <b>4/17/2004 where your developmental plan</b><br/>23 <b>is working on running the unit?</b></p>                                                    |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 117</p> <p>1 A. I don't know if that's the</p> <p>2 last document. Again, that was too many</p> <p>3 documents. So I don't know if that's the</p> <p>4 last document.</p> <p>5 <b>Q. That was going to be my next</b></p> <p>6 <b>question. This is the last one you had.</b></p> <p>7 <b>That's not the last review you received,</b></p> <p>8 <b>correct?</b></p> <p>9 A. One more time?</p> <p>10 <b>Q. I mean, you received regular</b></p> <p>11 <b>evaluations while you worked for the</b></p> <p>12 <b>company, did you not?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. Okay. The last one that you</b></p> <p>15 <b>have given me is dated -- well, it just</b></p> <p>16 <b>says process date, April 17th, 2004. You</b></p> <p>17 <b>would have had --</b></p> <p>18 A. Again, I don't know if that's</p> <p>19 the last one that I've turned in, because</p> <p>20 I turned in so many documents. I don't</p> <p>21 know if that was the last review or</p> <p>22 evaluation that I turned in.</p> <p>23 <b>Q. When you say turned in, you</b></p> | <p style="text-align: right;">Page 119</p> <p>1 going to different locations.</p> <p>2 <b>Q. Okay. But you've said this</b></p> <p>3 <b>evaluation was done by Tommy because you</b></p> <p>4 <b>had been assigned to Rich, but you had</b></p> <p>5 <b>not been with him long enough?</b></p> <p>6 A. Right. When you said 2004, I</p> <p>7 was also promoted in 2004. So when you</p> <p>8 said that you didn't see anything on it</p> <p>9 and it said associate, I know I was</p> <p>10 promoted. So I thought that that was the</p> <p>11 evaluation from Tom that was given to</p> <p>12 Rich which I thought was that evaluation.</p> <p>13 <b>Q. It may be.</b></p> <p>14 A. No. That evaluation is from</p> <p>15 Tom during my tenure with Tom.</p> <p>16 <b>Q. Do you recollect when you</b></p> <p>17 <b>were promoted in 2004?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. Okay. When was that?</b></p> <p>20 A. Senior associate in July and</p> <p>21 general manager September.</p> <p>22 <b>Q. Okay. Who promoted you to</b></p> <p>23 <b>senior associate?</b></p> |
| <p style="text-align: right;">Page 118</p> <p>1 mean to your lawyers?</p> <p>2 A. That would have come from me.</p> <p>3 <b>Q. Right. To your lawyers?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. I'm not asking you about what</b></p> <p>6 <b>you gave your lawyers. I'm just saying</b></p> <p>7 <b>you received regular reviews,</b></p> <p>8 <b>evaluations, coachings, and trainings</b></p> <p>9 <b>while you were at Cracker Barrel,</b></p> <p>10 <b>correct?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. Okay. We can agree that you</b></p> <p>13 <b>have received evaluations past April of</b></p> <p>14 <b>2004, right?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. This just happened to be the</b></p> <p>17 <b>last one you had in your file, as far as</b></p> <p>18 <b>we know based on what was produced to us?</b></p> <p>19 A. As far as I know.</p> <p>20 <b>Q. Okay. All right. Where were</b></p> <p>21 <b>you working in 2004?</b></p> <p>22 A. I was out of Athens, Georgia,</p> <p>23 but that was the time frame that I was</p>                                                    | <p style="text-align: right;">Page 120</p> <p>1 A. Ron Phillips.</p> <p>2 <b>Q. Okay. Who was your district</b></p> <p>3 <b>manager who would have recommended it?</b></p> <p>4 A. I was assigned to George</p> <p>5 Katsoudas, but, again, I don't know if he</p> <p>6 requested feedback from the other</p> <p>7 district managers who I went to assist in</p> <p>8 the restaurants.</p> <p>9 <b>Q. Okay. So George may have</b></p> <p>10 <b>made the recommendation to Ron, and Ron</b></p> <p>11 <b>may have asked other district managers</b></p> <p>12 <b>their opinion as well?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. Okay. You just don't know</b></p> <p>15 <b>one way or the other?</b></p> <p>16 A. Correct.</p> <p>17 <b>Q. All right. So which store</b></p> <p>18 <b>were you located at when you became</b></p> <p>19 <b>senior associate?</b></p> <p>20 A. Lithia Springs, Georgia.</p> <p>21 <b>Q. And that is -- then Rich</b></p> <p>22 <b>Alexander has now become your district</b></p> <p>23 <b>manager; is that right?</b></p>                         |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 121</p> <p>1 A. No.</p> <p>2 <b>Q. When did that occur?</b></p> <p>3 A. When I became general</p> <p>4 manager.</p> <p>5 <b>Q. All right. So you're --</b></p> <p>6 A. In September.</p> <p>7 <b>Q. Okay. September of '04 which</b></p> <p>8 <b>store are you in?</b></p> <p>9 A. I relocated to Gardendale,</p> <p>10 Alabama.</p> <p>11 <b>Q. All right. Did you apply for</b></p> <p>12 <b>a general manager position?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. Okay. How did you go about</b></p> <p>15 <b>doing that?</b></p> <p>16 A. They list positions that's</p> <p>17 available. Actually, I applied to Warner</p> <p>18 Robbins, Georgia, and I was requested for</p> <p>19 -- to interview for Gardendale.</p> <p>20 <b>Q. Okay. So there was an</b></p> <p>21 <b>opening for general manager in Warner</b></p> <p>22 <b>Robbins, Georgia. Did you interview with</b></p> <p>23 <b>somebody?</b></p>                                                                                                      | <p style="text-align: right;">Page 123</p> <p>1 <b>Q. Right. They explained that</b></p> <p>2 <b>somebody else got it but that do you want</b></p> <p>3 <b>to go interview at Gardendale?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. All right. Who did you</b></p> <p>6 <b>interview with at Gardendale?</b></p> <p>7 A. Rich Alexander was there,</p> <p>8 James Smith.</p> <p>9 <b>Q. You're going to have to tell</b></p> <p>10 <b>me who some of these people are. Who is</b></p> <p>11 <b>James Smith?</b></p> <p>12 A. These are restaurant district</p> <p>13 managers. Richard Alexander, James Smith</p> <p>14 are the only ones I can remember their</p> <p>15 names. The retail district manager that</p> <p>16 was there -- I'm sorry. I remember the</p> <p>17 face. I just don't remember the name.</p> <p>18 <b>Q. That's fine.</b></p> <p>19 A. And Ron Phillips is a name</p> <p>20 that I remember who was physically there.</p> <p>21 <b>Q. Where was the interview?</b></p> <p>22 A. Gardendale, Alabama.</p> <p>23 <b>Q. And this is Mr. Alexander's</b></p> |
| <p style="text-align: right;">Page 122</p> <p>1 A. Yes.</p> <p>2 <b>Q. Who did you interview with?</b></p> <p>3 A. It was a panel of four --</p> <p>4 five. And I don't know all their names,</p> <p>5 but Ron Phillips was a member. The</p> <p>6 regional vice-president sits in on those</p> <p>7 interviews.</p> <p>8 <b>Q. Do you remember anybody else?</b></p> <p>9 A. Matt, his last name Dunnaway,</p> <p>10 Matt Dunnaway. And James Smith was</p> <p>11 another district -- restaurant district</p> <p>12 manager. And then there were two retail</p> <p>13 district managers there as well. I don't</p> <p>14 know their names.</p> <p>15 <b>Q. Okay. All right. Apparently</b></p> <p>16 <b>you did not get that position at Warner</b></p> <p>17 <b>Robbins; is that correct?</b></p> <p>18 A. That's correct.</p> <p>19 <b>Q. But the next call you get is</b></p> <p>20 <b>will you come interview for the general</b></p> <p>21 <b>manager at Gardendale?</b></p> <p>22 A. Yes. But they explained</p> <p>23 Warner Robbins to me.</p> | <p style="text-align: right;">Page 124</p> <p>1 <b>district now?</b></p> <p>2 A. That is now, yes.</p> <p>3 <b>Q. Okay. And you were</b></p> <p>4 <b>recommended to be given the opportunity</b></p> <p>5 <b>to be general manager at Gardendale?</b></p> <p>6 A. What do you mean</p> <p>7 recommended?</p> <p>8 <b>Q. Well, the people who</b></p> <p>9 <b>interviewed you recommended that you be</b></p> <p>10 <b>given the offer and it's approved, I take</b></p> <p>11 <b>it; is that right?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. Okay. Do you know how that</b></p> <p>14 <b>works internally?</b></p> <p>15 A. No.</p> <p>16 <b>Q. Okay. So if I tell you that</b></p> <p>17 <b>the district manager of the area makes a</b></p> <p>18 <b>recommendation for the hiring of general</b></p> <p>19 <b>manager to the next level and that they</b></p> <p>20 <b>approve it, you don't know one way or the</b></p> <p>21 <b>other how that works?</b></p> <p>22 A. That's correct.</p> <p>23 <b>Q. So who gives you -- who</b></p>                                    |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 125</p> <p>1 actually gives you the offer? Do you<br/>2 remember who called you?<br/>3 A. The first phone call came<br/>4 from Ron Phillips, and the second phone<br/>5 call came from Rich Alexander.<br/>6 Q. Okay. And what do they say?<br/>7 A. Ron just called and asked if<br/>8 I had heard from Rich yet, and I said<br/>9 no. And he said congratulations, and we<br/>10 termed the call.<br/>11 Q. And you waited to hear from<br/>12 Rich?<br/>13 A. Yes.<br/>14 Q. And then Rich called you and<br/>15 said we're offering you the general<br/>16 manager for Gardendale and gave you the<br/>17 details, I guess?<br/>18 A. Yes.<br/>19 Q. All right. When were you to<br/>20 start in Gardendale?<br/>21 A. September '04.<br/>22 Q. Okay. So you came from --<br/>23 you were living I guess in Georgia at the</p> | <p style="text-align: right;">Page 127</p> <p>1 A. Yes.<br/>2 Q. Lisa is an associate manager?<br/>3 A. Associate manager.<br/>4 Q. Somebody named Willis is an<br/>5 associate manager?<br/>6 A. Yes.<br/>7 Q. And then there was a fourth<br/>8 associate manager?<br/>9 A. Yes.<br/>10 Q. Okay. So you had four<br/>11 associate managers?<br/>12 A. Three associate, one senior<br/>13 associate, yes.<br/>14 Q. Three associate and one<br/>15 senior. Okay. All right. You began as<br/>16 the general manager in Gardendale, and<br/>17 how did that go?<br/>18 A. I don't understand.<br/>19 Q. Well, I mean, you know, you<br/>20 come in. I guess you assign the<br/>21 associate managers to specific duties,<br/>22 and you take on specific duties yourself?<br/>23 A. No. The duties were already</p>                                                      |
| <p style="text-align: right;">Page 126</p> <p>1 time?<br/>2 A. At that time, yes.<br/>3 Q. All right. Where did you<br/>4 move to?<br/>5 A. Birmingham, Alabama.<br/>6 Q. Okay. And you started in<br/>7 September as the general manager?<br/>8 A. Yes.<br/>9 Q. Were there any associate<br/>10 managers who were already in Gardendale<br/>11 at the time?<br/>12 A. Yes.<br/>13 Q. Who were they?<br/>14 A. Lisa Clayburn. Her last name<br/>15 is Willis. I just don't remember her<br/>16 first name. And there was one other<br/>17 young lady. I don't recall her name.<br/>18 Q. Okay.<br/>19 A. And then Tommy Patterson.<br/>20 Q. Okay. And so Tommy Patterson<br/>21 is an associate manager?<br/>22 A. Senior associate manager.<br/>23 Q. Senior associate manager?</p>                                                                                | <p style="text-align: right;">Page 128</p> <p>1 assigned when I got there because Tommy<br/>2 Patterson was the acting general manager<br/>3 because they were without a general<br/>4 manager for some time before I got there.<br/>5 Q. Okay.<br/>6 A. So I did not change the areas<br/>7 of responsibilities because I didn't know<br/>8 their performance in those<br/>9 responsibilities.<br/>10 Q. Okay. Well, did you have any<br/>11 problems or issues with managing those<br/>12 associate managers?<br/>13 A. I don't understand what you<br/>14 mean by problems or issues.<br/>15 Q. Well, you're their boss,<br/>16 right?<br/>17 A. Yes.<br/>18 Q. All right. You eventually<br/>19 judged their performance and what their<br/>20 strengths and weaknesses were, I take it?<br/>21 A. Yes.<br/>22 Q. Did you have any trouble<br/>23 managing them?</p> |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 129</p> <p>1 A. There was no trouble managing<br/>2 them. I mean, I had no problems with the<br/>3 duties that they were assigned with and<br/>4 their performance of their duties.<br/>5 <b>Q. Okay. Were there any other</b><br/>6 <b>– you're hesitating as if there's some</b><br/>7 <b>other issue. Is there some other issue?</b><br/>8 A. No. It was more so just<br/>9 trying to express my answer so that, you<br/>10 know, it's understood.<br/>11 <b>Q. All right. So as far as you</b><br/>12 <b>were concerned, they all performed well</b><br/>13 <b>in their assigned duties?</b><br/>14 A. Not well, no.<br/>15 <b>Q. Okay. Well, how did they</b><br/>16 <b>perform?</b><br/>17 A. Their performance wasn't to<br/>18 standard, but it also required coaching.<br/>19 So it was not knowing their knowledge of<br/>20 their positions, not knowing them or<br/>21 their characters or how they work in<br/>22 those positions could dictate their<br/>23 performance. So they didn't perform</p> | <p style="text-align: right;">Page 131</p> <p>1 developed, and they had not learned the<br/>2 lesser duties prior to going to that<br/>3 duty. So I just took them into the<br/>4 easier duties so they would learn the<br/>5 basics for the following duties.<br/>6 <b>Q. All right. Did you take over</b><br/>7 <b>then any of their specific duties?</b><br/>8 A. Physically take over, no.<br/>9 <b>Q. Okay. Who did you assign</b><br/>10 <b>those to?</b><br/>11 A. Tommy Patterson, the senior<br/>12 associate. He was responsible for the<br/>13 initial follow-up once the system was put<br/>14 into place. But to physically take over<br/>15 their duties, no.<br/>16 <b>Q. Well, who was in charge of</b><br/>17 <b>scheduling?</b><br/>18 A. I don't know who had that<br/>19 specific duty at that time.<br/>20 <b>Q. Who was in charge of food</b><br/>21 <b>cost?</b><br/>22 A. Again, I don't know who had<br/>23 what particular duty at what time.</p>                                                                    |
| <p style="text-align: right;">Page 130</p> <p>1 well, but they weren't totally<br/>2 inadequate.<br/>3 <b>Q. How long did it take you to</b><br/>4 <b>come to this conclusion?</b><br/>5 A. I had a meeting with them on<br/>6 responsibilities in November of 2004.<br/>7 <b>Q. Okay. And did you make any</b><br/>8 <b>notes or write anybody up or anything</b><br/>9 <b>like that in November of 2004?</b><br/>10 A. No one was documented, just<br/>11 areas of responsibilities were changed,<br/>12 but no one was given disciplinary action<br/>13 based on performance.<br/>14 <b>Q. So you just held a management</b><br/>15 <b>meeting?</b><br/>16 A. Yes.<br/>17 <b>Q. And said I'm going to change</b><br/>18 <b>your duties?</b><br/>19 A. Yes.<br/>20 <b>Q. Whose duties did you change?</b><br/>21 A. The younger associates, the<br/>22 duties that they had were pretty much<br/>23 duties you have to be trained and</p>                                                                                                          | <p style="text-align: right;">Page 132</p> <p>1 <b>Q. Well, how does it work? They</b><br/>2 <b>schedule or they do food cost and then</b><br/>3 <b>they give it to you for check off or</b><br/>4 <b>approval as a general manager? I mean,</b><br/>5 <b>how does that work?</b><br/>6 A. Well, scheduling is done by<br/>7 the labor manager. Then it's passed to<br/>8 the general manager and then passed to<br/>9 the district manager. And then it's a<br/>10 conference call and it's reviewed.<br/>11 <b>Q. Okay.</b><br/>12 A. Food cost is pretty much done<br/>13 the same way except for one is done<br/>14 without the general manager, and one is<br/>15 done with the general manager. It's done<br/>16 twice a month. So the mid-month one may<br/>17 not involve the general manager, but the<br/>18 end of the month one would.<br/>19 <b>Q. At the end of the month you</b><br/>20 <b>look back and see what's happened</b><br/>21 <b>throughout the month to check the food</b><br/>22 <b>cost?</b><br/>23 A. Correct.</p> |

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| <p style="text-align: right;">Page 133</p> <p>1 <b>Q. And then you have to report</b><br/> 2 <b>it to your district manager?</b><br/> 3 A. Correct.<br/> 4 <b>Q. Okay. And there's certain</b><br/> 5 <b>standards that you're supposed to meet</b><br/> 6 <b>with food cost and labor cost that you're</b><br/> 7 <b>looking at, I guess, on a monthly basis?</b><br/> 8 A. Yes.<br/> 9 <b>Q. Okay. When you say there's a</b><br/> 10 <b>conference call, is that like a regularly</b><br/> 11 <b>standing conference call?</b><br/> 12 A. Yes.<br/> 13 <b>Q. When is that scheduled?</b><br/> 14 A. Weekly.<br/> 15 <b>Q. I mean, is it at the same</b><br/> 16 <b>time or just it varies?</b><br/> 17 A. Usually at the same time<br/> 18 unless something else is going on where<br/> 19 we may have to call and say one is out of<br/> 20 town or one call was extended from<br/> 21 another restaurant, because of the<br/> 22 individual restaurant and the DM. So if<br/> 23 Restaurant A's call lasted longer, then</p> | <p style="text-align: right;">Page 135</p> <p>1 <b>Q. How many evaluations do you</b><br/> 2 <b>get per year?</b><br/> 3 A. There are two a year,<br/> 4 semi-annual.<br/> 5 <b>Q. Okay. So your second one</b><br/> 6 <b>would have been done by Rich Alexander?</b><br/> 7 A. No. Because the second one<br/> 8 would have been due in October. I didn't<br/> 9 get promoted until September, which means<br/> 10 I would have only had thirty days under<br/> 11 Rich, which would not have given him<br/> 12 enough time to evaluate me.<br/> 13 <b>Q. Okay. Well, this one that</b><br/> 14 <b>you've produced to me is from April of</b><br/> 15 <b>'04?</b><br/> 16 A. Yes.<br/> 17 <b>Q. So what you're saying is</b><br/> 18 <b>there's a second one for '04, your second</b><br/> 19 <b>semi-annual review?</b><br/> 20 A. That's correct.<br/> 21 <b>Q. And it's your recollection</b><br/> 22 <b>that that would have been also done by</b><br/> 23 <b>Tom?</b></p>              |
| <p style="text-align: right;">Page 134</p> <p>1 Restaurant B's call may be later.<br/> 2 <b>Q. The scheduling of managers,</b><br/> 3 <b>when managers worked, who does that?</b><br/> 4 A. That's the general manager or<br/> 5 the senior associate.<br/> 6 <b>Q. Okay. Who did your first</b><br/> 7 <b>evaluation in Gardendale?</b><br/> 8 A. My first one in Gardendale,<br/> 9 that's the one I believe that Tom<br/> 10 Speziale did because I didn't have enough<br/> 11 time under Rich.<br/> 12 <b>Q. Well, no. That one we looked</b><br/> 13 <b>at was in early '04. You said you didn't</b><br/> 14 <b>start in Gardendale until September of --</b><br/> 15 A. Of '04.<br/> 16 <b>Q. Yes.</b><br/> 17 A. That's why I said if this one<br/> 18 has me as associate manager with Tom<br/> 19 Speziale, that's the one when I was<br/> 20 physically under Tom Speziale.<br/> 21 <b>Q. This was Evaluation 1 of</b><br/> 22 <b>2004?</b><br/> 23 A. Correct.</p>                                                     | <p style="text-align: right;">Page 136</p> <p>1 A. Yes.<br/> 2 <b>Q. So the first evaluation of</b><br/> 3 <b>'05 would have been the one that was done</b><br/> 4 <b>by Rich Alexander; is that correct?</b><br/> 5 A. Again, you would have to give<br/> 6 me dates, because for us, the fiscal<br/> 7 years and the calendar years are<br/> 8 different. So I have to know dates<br/> 9 before I can answer that.<br/> 10 <b>Q. April of '05 would have been</b><br/> 11 <b>done by Rich Alexander?</b><br/> 12 A. Yes.<br/> 13 <b>Q. And that would have been done</b><br/> 14 <b>for the period of October through March?</b><br/> 15 A. On the front it will give you<br/> 16 period and fiscal year.<br/> 17 MS. BUSBY: I'll let you look<br/> 18 at it. Let me mark this as Exhibit 2.<br/> 19 (Whereupon, Defendant's<br/> 20 Exhibit No. 2 was marked for<br/> 21 identification and copy of same is<br/> 22 attached hereto.)<br/> 23 <b>Q. This is the same front as the</b></p> |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 137</p> <p>1 one you previously showed me, and it's in<br/>2 April. So it appears to me that they do<br/>3 your first semi-annual review -- they<br/>4 give them to you in April. That's<br/>5 consistent with the one you produced for<br/>6 2004. Is that your recollection?<br/>7 A. This is for January. This is<br/>8 through January.<br/>9 Q. Okay. So this review is for<br/>10 the period of time, for your purposes<br/>11 then, from when you started in September<br/>12 to January, September '04 to January of<br/>13 '05?<br/>14 A. Yes.<br/>15 Q. Okay. And then -- you keep<br/>16 that copy. Okay. And this review is<br/>17 gone over with you by the district<br/>18 manager who at the time for you was Rich<br/>19 Alexander?<br/>20 A. Yes.<br/>21 Q. Okay. If you'll flip to the<br/>22 last page, it appears to me that your<br/>23 signature is on here. It's the one that</p> | <p style="text-align: right;">Page 139</p> <p>1 net operating income, and he's saying<br/>2 that that needs to be worked on; is that<br/>3 right?<br/>4 A. Yes. These numbers are under<br/>5 dual management.<br/>6 Q. Tell me what you mean by<br/>7 that.<br/>8 A. For the time frame, again, I<br/>9 didn't get there until September.<br/>10 Q. Right.<br/>11 A. So the numbers continue on<br/>12 for the entire quarter.<br/>13 Q. Right.<br/>14 A. And regardless of the numbers<br/>15 prior to my getting there, they still<br/>16 belong to the restaurant itself.<br/>17 Q. Right. So what he's saying<br/>18 is -- the way I read this is that in the<br/>19 first half he's saying you've got some<br/>20 disappointing numbers that you need to<br/>21 work on, and they are concerning. But<br/>22 what I'm really concerned about is the<br/>23 lack of cohesive committed management</p>                                                                                  |
| <p style="text-align: right;">Page 138</p> <p>1 looks like a big gigantic D; is that<br/>2 right?<br/>3 A. Yes.<br/>4 Q. That's your signature?<br/>5 A. Yes.<br/>6 Q. So you and Rich reviewed this<br/>7 review; is that correct?<br/>8 A. Yes.<br/>9 Q. All right. And your<br/>10 supervisor's comments would be Rich<br/>11 Alexander's comments to you?<br/>12 A. Yes.<br/>13 Q. And he is going over y'all<br/>14 have had -- it appears that you've had<br/>15 some not so good numbers as it relates to<br/>16 financial targets; is that correct?<br/>17 A. Yes.<br/>18 Q. Okay. And the profit and<br/>19 loss, that's what P&amp;L stands for; is that<br/>20 right?<br/>21 A. Yes.<br/>22 Q. The profit and loss is being<br/>23 affected by food cost and labor cost and</p>                                                                                                                                                  | <p style="text-align: right;">Page 140</p> <p>1 team at your unit?<br/>2 A. Okay.<br/>3 Q. Is that not correct? That's<br/>4 what's in the second paragraph.<br/>5 A. Yes, that's in the second<br/>6 paragraph.<br/>7 Q. Okay. And he says that y'all<br/>8 have had many conversations about<br/>9 subordinate managers' frustrations with<br/>10 your leadership. And then he says in the<br/>11 following areas, which we'll go through.<br/>12 But before we get to that, what was that<br/>13 about? You and Dwight were -- he was<br/>14 coaching you? I mean, what happens here?<br/>15 A. No, this was him expressing<br/>16 his concerns with, again, the numbers,<br/>17 what the numbers -- the numbers, they<br/>18 can't be changed.<br/>19 Q. Right. I'm not talking about<br/>20 the numbers. I want to know the -- he<br/>21 says that his biggest concern is the lack<br/>22 of cohesive committed management team at<br/>23 your unit. And then he says that you and</p> |

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## FREEDOM COURT REPORTING

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1 he have had many conversations about your  
2 subordinate managers' frustrations with  
3 your leadership in the following areas,  
4 mutual respect, credibility, work ethic,  
5 passion for position you're in, your  
6 vision statement, and other key  
7 leadership traits. And it says that  
8 you're not going to be able to fix the  
9 top line in the middle of the P&L until  
10 you get your team behind you and set a  
11 clear direction for your unit. That's  
12 what the second paragraph says; is that  
13 right?

14 A. Yes.

15 Q. Okay. Well, what I want to  
16 go through with you is, first, he says  
17 that y'all have had many conversations  
18 about this.

19 A. Yes.

20 Q. Okay. So I take it that you  
21 and he, from sometime after you began in  
22 September until this review was done in  
23 January, for the period of January, you

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1 inadequate. It was the behaviors where  
2 there were issues.

3 Q. What were they complaining  
4 about you? I mean, the words he uses --  
5 so I'm just trying to get what your  
6 response to this is -- is he said that  
7 they say that they are frustrated with  
8 your leadership in the following areas,  
9 mutual respect. That sounds to me like  
10 you didn't respect them and they didn't  
11 respect you. Is that what that means to  
12 you?

13 A. No, ma'am. Mutual respect is  
14 when a decision has to be made and you  
15 have to stand firm with your decision,  
16 the same way if Rich tells me this has to  
17 be done, that's that. You know, the  
18 debate is over. Then that was an area  
19 when changes were made that were  
20 necessary and that had to have been made,  
21 whether they liked them or not, they were  
22 necessary. They were company policy.  
23 They were standards. And I did not

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1 and he have met over issues with  
2 management of the unit and issues between  
3 you and the other associate managers; is  
4 that right?

5 A. We met over behaviors, yes.

6 Q. All right. When you say met  
7 over behaviors, what are you referring  
8 to? I just want to make sure you and I  
9 are communicating.

10 A. Okay. What I mean by met  
11 over behaviors, where, as a general  
12 manager, instructions were given as far  
13 as even when the areas of  
14 responsibilities were changed, there was  
15 push back on those areas of  
16 responsibility. They were very  
17 comfortable, the management team who was  
18 there prior. They were very comfortable  
19 with the acting general manager that they  
20 had, and there was push back. Again, as  
21 I testified earlier, there was -- as far  
22 as their performance, they weren't  
23 performing well, but they also weren't

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1 accept the feedback that they apparently  
2 were accustomed to being able to give.

3 Q. Okay. And then credibility,  
4 work ethic, passion for the position you  
5 are in?

6 A. I think that all ties back  
7 again to the behaviors. The passion has  
8 always been there, and --

9 Q. Well, you're aware, are you  
10 not, that your work ethic was questioned  
11 because there were those in the unit who  
12 felt like you were not at work enough.

13 A. No.

14 Q. You've never heard that  
15 before?

16 A. That I was not at work  
17 enough?

18 Q. Right.

19 A. No.

20 Q. I'm not saying it's true or  
21 not true. I'm saying that is a complaint  
22 that was made against you?

23 A. Yes, yes.

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## FREEDOM COURT REPORTING

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 145</p> <p>1 <b>Q.</b> All right. I mean, that's</p> <p>2 <b>what I'm trying to get to.</b></p> <p>3 <b>A.</b> Yes.</p> <p>4 <b>Q.</b> I'm not here to debate what</p> <p>5 <b>went on at the time. But from Rich</b></p> <p>6 <b>Alexander, district manager's position,</b></p> <p>7 <b>what he is having to deal with is you are</b></p> <p>8 <b>frustrated because you've made a</b></p> <p>9 <b>decision, and they are used to being able</b></p> <p>10 <b>to argue back, and you're not going to</b></p> <p>11 <b>have that because you've made the</b></p> <p>12 <b>decision. They are frustrated because</b></p> <p>13 <b>they feel like they ought to be able to</b></p> <p>14 <b>argue back because they allege they know</b></p> <p>15 <b>more than you because you're not in the</b></p> <p>16 <b>unit as much as you should be?</b></p> <p>17 <b>A.</b> No.</p> <p>18 <b>Q.</b> Okay. What's incorrect about</p> <p>19 <b>what I said?</b></p> <p>20 <b>A.</b> The push back has nothing to</p> <p>21 <b>do with the allege of me not being in the</b></p> <p>22 <b>unit. The push back was when they felt</b></p> <p>23 <b>that they should be able to do certain</b></p> | <p style="text-align: right;">Page 147</p> <p>1 <b>Q.</b> I mean --</p> <p>2 <b>A.</b> Because during that time</p> <p>3 <b>frame, you know, manager schedules are</b></p> <p>4 <b>done and submitted. We submit schedules,</b></p> <p>5 <b>and we have our schedules. So any time</b></p> <p>6 <b>that you're not in the restaurant,</b></p> <p>7 <b>there's no coverage. So that's</b></p> <p>8 <b>impossible.</b></p> <p>9 <b>Q.</b> All right. Did you try to</p> <p>10 <b>address their complaint that you weren't</b></p> <p>11 <b>there enough?</b></p> <p>12 <b>A.</b> Rich and I had that</p> <p>13 <b>discussion, yes, several discussions.</b></p> <p>14 <b>Q.</b> Okay. Well, apparently you</p> <p>15 <b>gave him a plan of action that included</b></p> <p>16 <b>reaching out to others for suggestions</b></p> <p>17 <b>that would improve your leadership</b></p> <p>18 <b>skills. What was that?</b></p> <p>19 <b>A.</b> I don't recall the plan of</p> <p>20 <b>action itself unless you have something I</b></p> <p>21 <b>can read.</b></p> <p>22 <b>Q.</b> Well, I might. What -- do</p> <p>23 <b>you recollect what it would look like?</b></p> |
| <p style="text-align: right;">Page 146</p> <p>1 <b>things or act certain ways and it was in</b></p> <p>2 <b>violation of company policy or if it's</b></p> <p>3 <b>not within our standards and the answer</b></p> <p>4 <b>is no, then they were not happy with</b></p> <p>5 <b>that.</b></p> <p>6 <b>Q.</b> Give me an example.</p> <p>7 <b>A.</b> A prime example that what</p> <p>8 <b>frustrated -- I had one of the managers</b></p> <p>9 <b>wanting to terminate an employee, but as</b></p> <p>10 <b>a management team, the employee was not</b></p> <p>11 <b>set up for success, and I would not sign</b></p> <p>12 <b>off on the termination, because they were</b></p> <p>13 <b>not disciplined, the behavior. They were</b></p> <p>14 <b>disciplining based on emotions.</b></p> <p>15 <b>Q.</b> Who was that? Do you</p> <p>16 <b>recollect?</b></p> <p>17 <b>A.</b> No, I can't -- it's a male</p> <p>18 <b>employee, but I can't recall his name.</b></p> <p>19 <b>Q.</b> All right. Why were they</p> <p>20 <b>complaining that you weren't in the store</b></p> <p>21 <b>enough?</b></p> <p>22 <b>A.</b> I can't answer that one, why</p> <p>23 <b>they were complaining I wasn't.</b></p>                 | <p style="text-align: right;">Page 148</p> <p>1 <b>A.</b> No.</p> <p>2 <b>Q.</b> I mean, is it -- do you</p> <p>3 <b>remember doing one?</b></p> <p>4 <b>A.</b> All evaluations follows --</p> <p>5 <b>plan of action is followed by anything</b></p> <p>6 <b>that's commented on.</b></p> <p>7 <b>Q.</b> Well, when it said you're</p> <p>8 <b>going to reach out to others in your</b></p> <p>9 <b>organization, I take it that means</b></p> <p>10 <b>Cracker Barrel?</b></p> <p>11 <b>A.</b> Yes.</p> <p>12 <b>Q.</b> Did you ever reach out to</p> <p>13 <b>anybody? Did you call or talk to anybody</b></p> <p>14 <b>about help with leadership skills?</b></p> <p>15 <b>A.</b> I called out to Tom Speziale,</p> <p>16 <b>not for help with leadership skills, but</b></p> <p>17 <b>as an avenue of having someone to bounce</b></p> <p>18 <b>ideas off of that knows company policies</b></p> <p>19 <b>and procedures and things of that nature.</b></p> <p>20 <b>Q.</b> Do you recollect did he help</p> <p>21 <b>you put together a plan of action?</b></p> <p>22 <b>A.</b> No, he didn't. It was just</p> <p>23 <b>conversation.</b></p>                  |

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| <p style="text-align: right;">Page 149</p> <p>1 <b>Q. All right. Did you ever --</b><br/> 2 <b>is there another -- isn't there another</b><br/> 3 <b>Tom?</b><br/> 4 A. With Cracker Barrel?<br/> 5 <b>Q. Yeah.</b><br/> 6 A. Yes.<br/> 7 <b>Q. What was his last name?</b><br/> 8 A. I'm not sure.<br/> 9 <b>Q. Pate, Tom Pate?</b><br/> 10 A. Thomas Pate. He's with home<br/> 11 office.<br/> 12 <b>Q. Did you ever reach out to him</b><br/> 13 <b>for assistance in a leadership plan?</b><br/> 14 A. Human resources, yes.<br/> 15 <b>Q. He's with human resources?</b><br/> 16 A. I think he's human resources.<br/> 17 <b>Q. All right. Well, tell me</b><br/> 18 <b>about that.</b><br/> 19 A. I had further dealings --<br/> 20 earlier dealings with Tom when I was<br/> 21 going through the senior associate<br/> 22 management program, and he always just<br/> 23 said if we need to run ideas by him or to</p> | <p style="text-align: right;">Page 151</p> <p>1 <b>this evaluation is that you were dealing</b><br/> 2 <b>with profit and loss issues from a former</b><br/> 3 <b>manager; is that right?</b><br/> 4 A. Yes.<br/> 5 <b>Q. All right. Well, I'm going</b><br/> 6 <b>to -- do you recollect when the fiscal</b><br/> 7 <b>year is for Cracker Barrel, when it</b><br/> 8 <b>starts?</b><br/> 9 A. July or August.<br/> 10 <b>Q. Okay. So if I tell you the</b><br/> 11 <b>fiscal year starts in August, you would</b><br/> 12 <b>agree with me then that you had been</b><br/> 13 <b>running the Gardendale store for five of</b><br/> 14 <b>the six months that this evaluation</b><br/> 15 <b>covered, correct?</b><br/> 16 A. Yes.<br/> 17 <b>Q. So in all actuality, the</b><br/> 18 <b>performance comments that are made here</b><br/> 19 <b>relate to not former management but five</b><br/> 20 <b>months of your management? Wouldn't that</b><br/> 21 <b>be right?</b><br/> 22 A. No. It also constitutes the<br/> 23 time that I was also removed from the</p> |
| <p style="text-align: right;">Page 150</p> <p>1 talk to him, that we were allowed to call<br/> 2 him, and he gave us his number. And by<br/> 3 virtue of the position, I just thought he<br/> 4 would be someone that would be good to<br/> 5 talk to.<br/> 6 <b>Q. Is that who you worked with</b><br/> 7 <b>on your --</b><br/> 8 A. No. It was just<br/> 9 conversation.<br/> 10 <b>Q. -- plan of action?</b><br/> 11 A. Just conversation with Tom.<br/> 12 MS. BUSBY: Off the record a<br/> 13 minute.<br/> 14 (Whereupon, a discussion off<br/> 15 the record was held.)<br/> 16 MS. YORK: I need to take a<br/> 17 break.<br/> 18 (Whereupon, a luncheon recess<br/> 19 was taken.)<br/> 20 <b>Q. (By Ms. Busby) Mr. Rodgers,</b><br/> 21 <b>when we left for the lunch break, we were</b><br/> 22 <b>talking about your evaluation, and you</b><br/> 23 <b>were telling me that one of the issues on</b></p>           | <p style="text-align: right;">Page 152</p> <p>1 facility for Cracker Barrel where another<br/> 2 manager was still left.<br/> 3 <b>Q. I don't understand what you</b><br/> 4 <b>mean by that.</b><br/> 5 A. From that quarter when you<br/> 6 discussed profit and loss, guest<br/> 7 complaints is a part of profit and loss,<br/> 8 and if we -- that quarter I think we<br/> 9 received six, but three of them was prior<br/> 10 to my getting there. So the numbers from<br/> 11 August and from the time that I came in<br/> 12 in September, as I physically -- I<br/> 13 relocated there in September, but by the<br/> 14 13th or 14th is when I physically went<br/> 15 into position and started assuming<br/> 16 responsibility for the restaurant.<br/> 17 <b>Q. All right. So you take</b><br/> 18 <b>responsibility for half of September,</b><br/> 19 <b>October, November, December, and January</b><br/> 20 <b>during this period?</b><br/> 21 A. Yes.<br/> 22 <b>Q. Okay. And the food cost</b><br/> 23 <b>starts over every month, right?</b></p>     |

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| <p style="text-align: right;">Page 153</p> <p>1 A. Yes.</p> <p>2 <b>Q. And that's something that is</b></p> <p>3 <b>completely within the management control?</b></p> <p>4 A. Not completely.</p> <p>5 <b>Q. How is it not completely?</b></p> <p>6 A. Food costs done month to</p> <p>7 month is also partially with systems that</p> <p>8 were in place though it's done -- the</p> <p>9 numbers are done month to month, the</p> <p>10 systems are or the training is ongoing</p> <p>11 and continuous.</p> <p>12 <b>Q. I did not understand that.</b></p> <p>13 <b>I'm sorry. Okay.</b></p> <p>14 A. Okay. With food cost, there</p> <p>15 was an issue with food cost prior to my</p> <p>16 coming in. So the issue with food cost</p> <p>17 prior to my coming in, we have to</p> <p>18 evaluate what's the issue with food cost,</p> <p>19 how come that's happening, look at the</p> <p>20 training of the personnel that's dealing</p> <p>21 with it, which is everyone in the</p> <p>22 building, and then change those habits in</p> <p>23 order to improve on food cost.</p> | <p style="text-align: right;">Page 155</p> <p>1 <b>Q. And you said Lisa somebody?</b></p> <p>2 A. Clayburn I think is her last</p> <p>3 name.</p> <p>4 <b>Q. Has she been there over ten</b></p> <p>5 <b>years?</b></p> <p>6 A. No. She's been with the</p> <p>7 company for some time, but I don't know</p> <p>8 how long she was at Gardendale.</p> <p>9 <b>Q. But she had been at Cracker</b></p> <p>10 <b>Barrel for over ten years?</b></p> <p>11 A. I don't know her tenancy at</p> <p>12 Cracker Barrel.</p> <p>13 <b>Q. You do know that the</b></p> <p>14 <b>associate managers that you were working</b></p> <p>15 <b>for had been with the company for the</b></p> <p>16 <b>most part for long periods of time,</b></p> <p>17 <b>correct?</b></p> <p>18 A. No. I wasn't sure how long</p> <p>19 they had been with the company.</p> <p>20 <b>Q. All right. Let me make sure</b></p> <p>21 <b>that I'm very clear on what your</b></p> <p>22 <b>testimony is. Your testimony is you</b></p> <p>23 <b>agree that food cost is something that is</b></p> |
| <p style="text-align: right;">Page 154</p> <p>1 <b>Q. All right. Let's talk about</b></p> <p>2 <b>your associate managers that you came in</b></p> <p>3 <b>on. How long had they been with the</b></p> <p>4 <b>company?</b></p> <p>5 A. Tommy Patterson, the senior</p> <p>6 associate manager, I think at that time</p> <p>7 he had been with the company almost eight</p> <p>8 years, maybe nine years.</p> <p>9 <b>Q. All right. How long at</b></p> <p>10 <b>Gardendale?</b></p> <p>11 A. Four or five. I'm not sure</p> <p>12 how many years he had been there.</p> <p>13 <b>Q. Okay.</b></p> <p>14 A. Ms. Willis and the other</p> <p>15 three associates, I'm not sure their</p> <p>16 tenancy was with the company, how long.</p> <p>17 And I do know that one -- just to clear</p> <p>18 up on the other young lady, she had been</p> <p>19 at Gardendale maybe eight months to a</p> <p>20 year.</p> <p>21 <b>Q. What about Ms. Willis, how</b></p> <p>22 <b>long had she been there?</b></p> <p>23 A. I don't know.</p>                                                       | <p style="text-align: right;">Page 156</p> <p>1 <b>looked at monthly, yes or no?</b></p> <p>2 A. I agree that food cost is</p> <p>3 evaluated monthly, but there's issues</p> <p>4 that affected those monthly numbers.</p> <p>5 <b>Q. And those issues are things</b></p> <p>6 <b>that the general manager is supposed to</b></p> <p>7 <b>control?</b></p> <p>8 A. Those are things that all</p> <p>9 managers are actually supposed to</p> <p>10 control.</p> <p>11 <b>Q. Do you take personal</b></p> <p>12 <b>responsibility for anything?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. All right. What?</b></p> <p>15 A. The numbers of the restaurant</p> <p>16 when I took over.</p> <p>17 <b>Q. Okay. So did you take -- do</b></p> <p>18 <b>you take personal responsibility for what</b></p> <p>19 <b>the food cost numbers were for the month</b></p> <p>20 <b>of October?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. And then November?</b></p> <p>23 A. Yes.</p>                                                                                                |

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| <p style="text-align: right;">Page 157</p> <p>1 <b>Q. December?</b><br/> 2 A. Yes.<br/> 3 <b>Q. January?</b><br/> 4 A. Yes.<br/> 5 <b>Q. Until you left in September</b><br/> 6 <b>of '05?</b><br/> 7 A. No. I left there in May of<br/> 8 '05.<br/> 9 <b>Q. Where did you go?</b><br/> 10 A. Montgomery, Alabama.<br/> 11 <b>Q. All right. So you take</b><br/> 12 <b>responsibility for Gardendale until May</b><br/> 13 <b>of '05?</b><br/> 14 A. Yes.<br/> 15 <b>Q. Then you take responsibility</b><br/> 16 <b>for Montgomery June, July, August, and</b><br/> 17 <b>part of September of '05?</b><br/> 18 A. June, July, and August.<br/> 19 <b>Q. You take responsibility for</b><br/> 20 <b>June, July, and August for the numbers?</b><br/> 21 A. Yes.<br/> 22 <b>Q. All right. So back to this</b><br/> 23 <b>evaluation, it says that they've had --</b></p>                                                                                                                                                                                                                                                       | <p style="text-align: right;">Page 159</p> <p>1 <b>did not have many conversations with Mr.</b><br/> 2 <b>Alexander about those topics?</b><br/> 3 A. Again, we've had numerous of<br/> 4 conversations, but the conversations that<br/> 5 we had in reference to frustrations were<br/> 6 conversations initiated because of --<br/> 7 again, of behaviors that were portrayed.<br/> 8 Mutual respect conversations, again, are<br/> 9 conversations where they were not happy<br/> 10 with decisions that had to be made. And<br/> 11 the reason we had numerous of<br/> 12 conversations is because I've had to<br/> 13 contact Mr. Alexander in reference to it<br/> 14 versus Mr. Alexander contacting me.<br/> 15 <b>Q. All right. So your testimony</b><br/> 16 <b>is he did not talk to you about problems</b><br/> 17 <b>that the associate managers had with you?</b><br/> 18 A. No. We discussed it, but it<br/> 19 wasn't always initiated by Mr. Alexander.<br/> 20 <b>Q. I didn't say that. I'm just</b><br/> 21 <b>trying to get to you admit that the two</b><br/> 22 <b>of you talked about your frustration with</b><br/> 23 <b>your associate managers and your</b></p> |
| <p style="text-align: right;">Page 158</p> <p>1 <b>Mr. Alexander has had many conversations</b><br/> 2 <b>with you about complaints from your</b><br/> 3 <b>subordinate managers. And we've talked</b><br/> 4 <b>about those for the most part, correct?</b><br/> 5 A. No. We've had<br/> 6 conversations. The numbers of<br/> 7 conversations that we've had was about<br/> 8 behaviors. It wasn't the fact that he<br/> 9 came to me and said we have a complaint<br/> 10 about this. Most of those conversations<br/> 11 that we had was initiated by myself<br/> 12 because of the behaviors of the associate<br/> 13 managers.<br/> 14 <b>Q. All right. Well, his</b><br/> 15 <b>sentence is: We have had many</b><br/> 16 <b>conversations about your subordinate</b><br/> 17 <b>managers' frustrations with your</b><br/> 18 <b>leadership in the following areas, mutual</b><br/> 19 <b>respect, credibility, work ethic, passion</b><br/> 20 <b>for the position you are in, your vision</b><br/> 21 <b>statement, and other key leadership</b><br/> 22 <b>traits.</b><br/> 23 <b>So are you saying that you</b></p> | <p style="text-align: right;">Page 160</p> <p>1 <b>associate managers' frustration with you?</b><br/> 2 A. And I've already testified<br/> 3 that, yes, we've had that conversation<br/> 4 initiated on both ends.<br/> 5 <b>Q. And I promise this will go</b><br/> 6 <b>faster. I'm just trying to get us to the</b><br/> 7 <b>next paragraph. I mean, literally, I'm</b><br/> 8 <b>just trying to get us to the next</b><br/> 9 <b>paragraph.</b><br/> 10 <b>You don't dispute that you</b><br/> 11 <b>told Mr. Alexander you were frustrated</b><br/> 12 <b>with your people, and you don't dispute</b><br/> 13 <b>that Mr. Alexander told you that your</b><br/> 14 <b>people were frustrated with you?</b><br/> 15 A. No.<br/> 16 <b>Q. So y'all had numerous</b><br/> 17 <b>conversations about that topic regardless</b><br/> 18 <b>of who brought it up?</b><br/> 19 A. Yes.<br/> 20 <b>Q. Okay. Now then, based on</b><br/> 21 <b>that, what he says is: You have given me</b><br/> 22 <b>a plan of action that includes reaching</b><br/> 23 <b>out to others. That's where we were when</b></p>                                                                                 |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 161</p> <p>1 we left off, right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. I found it, I think.</p> <p>4 And you're going to have to help me with</p> <p>5 exactly how this -- I'm going to give you</p> <p>6 all three of these things so that we can</p> <p>7 basically get to what all this is from a</p> <p>8 timeline perspective. It looks like</p> <p>9 -- I'm going to show you what I'm marking</p> <p>10 as Exhibits 3 and 4. I apologize for</p> <p>11 this, but I'm going to go in reverse.</p> <p>12 (Whereupon, Defendant's</p> <p>13 Exhibit Nos. 3 and 4 were marked for</p> <p>14 identification and copy of same is</p> <p>15 attached hereto.)</p> <p>16 Q. It looks like you are sending</p> <p>17 an e-mail to Mr. Alexander that says, as</p> <p>18 per our conversation, I have voicemail</p> <p>19 out to others who are giving me some</p> <p>20 feedback on measures I could take to</p> <p>21 resolve the perception matter here, and</p> <p>22 I'm going to forward you that as well.</p> <p>23 If this is not to your satisfaction, let</p> | <p style="text-align: right;">Page 163</p> <p>1 Q. No, no. I know it's not.</p> <p>2 The evaluation says that he already has</p> <p>3 that. He says you have given me a plan</p> <p>4 of action that includes reaching out to</p> <p>5 others in our organization for</p> <p>6 suggestions that will improve your</p> <p>7 leadership skills. That's what you say</p> <p>8 in that letter. Here's my plan of</p> <p>9 action. That's dated March the 30th,</p> <p>10 2005. Your evaluation you signed on --</p> <p>11 the beginning of April of 2005. I think</p> <p>12 that's what y'all are referring to, but,</p> <p>13 I mean, you may think differently.</p> <p>14 That's why I'm asking.</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So that is the plan of</p> <p>17 action that you had submitted to Rich</p> <p>18 that he's referring to in your evaluation</p> <p>19 where he says you gave me a plan of</p> <p>20 action, and that's a good step, but this</p> <p>21 is a serious problem, and we've got to do</p> <p>22 some more stuff. And that's what we're</p> <p>23 going to talk about in a minute. But I</p> |
| <p style="text-align: right;">Page 162</p> <p>1 me know.</p> <p>2 And that is on April the 2nd,</p> <p>3 2005. You send an attached March 30th,</p> <p>4 2005 letter, I guess. And then on</p> <p>5 Exhibit 3, I'm not exactly sure what this</p> <p>6 is, but apparently it looks like you've</p> <p>7 talked to somebody and they've sent you</p> <p>8 some sort of information about what they</p> <p>9 think you could do or review or read to</p> <p>10 assist you.</p> <p>11 So I'm going to let you read</p> <p>12 them, but before we even go there, let's</p> <p>13 start with Exhibit No. 3. Is that what</p> <p>14 that is, somebody has sent that to you?</p> <p>15 A. No. I don't remember ever</p> <p>16 seeing this.</p> <p>17 Q. All right. Well, then look</p> <p>18 at No. 4. No. 4 is an e-mail that you</p> <p>19 send to Rich attaching a letter that you</p> <p>20 write to him on March 30th, 2005, is it</p> <p>21 not?</p> <p>22 A. This letter is not in</p> <p>23 response to this (indicating).</p>                                                                      | <p style="text-align: right;">Page 164</p> <p>1 just want to get us to that -- how do we</p> <p>2 get to March 30th? I guess y'all had had</p> <p>3 a conversation. He had told you about</p> <p>4 these issues again and said you need to</p> <p>5 have a plan of action? I'm saying that</p> <p>6 based on reading your letter. Is that to</p> <p>7 your recollection or do you recollect</p> <p>8 something different?</p> <p>9 A. No. This isn't -- this was</p> <p>10 based on a manager meeting, and the</p> <p>11 results of this meeting was later brought</p> <p>12 to my attention.</p> <p>13 Q. Okay. What manager meeting?</p> <p>14 A. It was a manager meeting held</p> <p>15 at Gardendale that I was not a part of.</p> <p>16 Q. Okay.</p> <p>17 A. They -- I won't say they.</p> <p>18 Rich held an unusual meeting where he had</p> <p>19 a meeting where the associates were asked</p> <p>20 to rate their general manager, myself, on</p> <p>21 ethics and performances and things of</p> <p>22 that nature. And as the result of this</p> <p>23 meeting that they had, Rich conversed to</p>         |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 165</p> <p>1 me that the associate managers had<br/>2 frustrations. But this was a meeting<br/>3 that was very unusually held. That<br/>4 wasn't common practice to ask associates<br/>5 to eval their general manager that way<br/>6 and not have him present.<br/>7 <b>Q. Okay. Well, did you know</b><br/>8 <b>about the meeting when it occurred?</b><br/>9 A. No.<br/>10 <b>Q. All right. When did the</b><br/>11 <b>meeting occur?</b><br/>12 A. It happened in March while I<br/>13 was in Lebanon, Tennessee.<br/>14 <b>Q. All right. When were you in</b><br/>15 <b>Lebanon, Tennessee, and what were you</b><br/>16 <b>doing there?</b><br/>17 A. I don't recall the dates, but<br/>18 I was there with the training<br/>19 coordinator. She was brand new to her<br/>20 position, and it required both her and<br/>21 the general manager to attend.<br/>22 <b>Q. Somebody who was going to</b><br/>23 <b>work in the Gardendale store, you went</b></p> | <p style="text-align: right;">Page 167</p> <p>1 <b>Q. Okay. The district manager</b><br/>2 <b>goes to the stores in his district, what,</b><br/>3 <b>once a week?</b><br/>4 A. It just depends on his<br/>5 schedule.<br/>6 <b>Q. On some regular basis which</b><br/>7 <b>is not a specific day, I gather?</b><br/>8 A. Correct.<br/>9 <b>Q. All right. So did this</b><br/>10 <b>meeting occur on a day that he arrived on</b><br/>11 <b>his regularly scheduled visit?</b><br/>12 A. I don't know his schedule.<br/>13 <b>Q. You don't know?</b><br/>14 A. Right.<br/>15 <b>Q. Do you have any idea whether</b><br/>16 <b>or not he came for his normal visit and</b><br/>17 <b>somebody complained to him or how did</b><br/>18 <b>this go about occurring? I mean, do you</b><br/>19 <b>have any idea?</b><br/>20 A. I don't have any idea, but at<br/>21 no point would all the associates be<br/>22 scheduled to be there at the same time on<br/>23 the same day.</p> |
| <p style="text-align: right;">Page 166</p> <p>1 <b>with her?</b><br/>2 A. That's right.<br/>3 <b>Q. So y'all go to the training,</b><br/>4 <b>and I guess the associate manager is left</b><br/>5 <b>in charge of the store?</b><br/>6 A. The senior associate, Tommy<br/>7 Patterson.<br/>8 <b>Q. And sometime during that</b><br/>9 <b>time, there's a meeting that occurs?</b><br/>10 A. That's correct.<br/>11 <b>Q. Who told you about the</b><br/>12 <b>meeting?</b><br/>13 A. Rich did.<br/>14 <b>Q. When did he tell you?</b><br/>15 A. When I returned from<br/>16 Tennessee.<br/>17 <b>Q. Okay. Did he talk to you on</b><br/>18 <b>the phone or face to face?</b><br/>19 A. Face to face.<br/>20 <b>Q. All right. What did he say?</b><br/>21 A. He held a meeting with the<br/>22 associate managers, and he wanted to<br/>23 convey their frustrations.</p>                                                                                                                               | <p style="text-align: right;">Page 168</p> <p>1 <b>Q. Okay.</b><br/>2 A. Someone had to be -- with me<br/>3 out of the building, somebody had to be<br/>4 scheduled. There was too many bodies in<br/>5 at the same time.<br/>6 <b>Q. So they have a meeting, and</b><br/>7 <b>they talk about -- or you think it's a</b><br/>8 <b>meeting where at least he's talked to</b><br/>9 <b>them about what they say are their</b><br/>10 <b>frustrations?</b><br/>11 A. Correct.<br/>12 <b>Q. And you get back, and he</b><br/>13 <b>conveys they are frustrated about these</b><br/>14 <b>topics?</b><br/>15 A. Right.<br/>16 <b>Q. What were the topics?</b><br/>17 A. Their frustrations were about<br/>18 their areas of assignment.<br/>19 MS. YORK: I don't mean to<br/>20 interrupt again, but can I please have a<br/>21 copy of the exhibit?<br/>22 MS. BUSBY: There's one right<br/>23 there. This is my copy. You can look at</p>                                       |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 169</p> <p>1 that one.</p> <p>2 A. How their duties were changed</p> <p>3 around. They were also frustrated -- it</p> <p>4 was actually physically said that they</p> <p>5 didn't understand how I -- how come I was</p> <p>6 there versus Tommy who had been there for</p> <p>7 a number of years and was acting GM, how</p> <p>8 come I was promoted over -- well, I</p> <p>9 wasn't promoted over him. I was just</p> <p>10 promoted into the restaurant. And it was</p> <p>11 pretty much, again, more about personal</p> <p>12 than professional.</p> <p>13 Q. This says, Per your request,</p> <p>14 I'm responding to the letter of concern</p> <p>15 that you and I discussed on March 26th.</p> <p>16 When it says letter of concern, was there</p> <p>17 an actual letter?</p> <p>18 A. I don't remember. I don't</p> <p>19 recall. Again, when he met with me, we</p> <p>20 just had a brief conversation. So I</p> <p>21 don't know. I don't recall.</p> <p>22 Q. Okay. But from the meeting</p> <p>23 that you two had, you went back, and you</p> | <p style="text-align: right;">Page 171</p> <p>1 April the 5th instead of your standard</p> <p>2 managers meeting you had an off-site</p> <p>3 managers meeting, that you planned to do</p> <p>4 it. I don't know. Did you do that?</p> <p>5 A. Yes.</p> <p>6 Q. What occurred at that</p> <p>7 off-site meeting?</p> <p>8 A. We discussed the surveys.</p> <p>9 Q. And what was the feedback?</p> <p>10 A. In the surveys the main</p> <p>11 question that was asked and answered</p> <p>12 consistently was that the hourly</p> <p>13 employees felt that the management team</p> <p>14 was doing what they had to do to sabotage</p> <p>15 things and that they wanted to see things</p> <p>16 turn around.</p> <p>17 Q. I must have misunderstood</p> <p>18 you. They said the management team was</p> <p>19 sabotaging?</p> <p>20 A. Yes. They were specifically</p> <p>21 -- they were not asked to place their</p> <p>22 names on the survey. They were just</p> <p>23 asked to complete it, and it was turned</p>                                                                                                                                          |
| <p style="text-align: right;">Page 170</p> <p>1 said that you've enlisted some people to</p> <p>2 help you with these -- to use your term,</p> <p>3 interpersonal relations, I guess?</p> <p>4 A. Yes.</p> <p>5 Q. And you said you're going to</p> <p>6 conduct a survey of the hourly employees?</p> <p>7 A. That's correct.</p> <p>8 Q. Did you do that?</p> <p>9 A. Yes, I did.</p> <p>10 Q. Where is the survey?</p> <p>11 A. They were sent to Cracker</p> <p>12 Barrel home office.</p> <p>13 Q. Okay. And it was hourly</p> <p>14 employees who did this?</p> <p>15 A. Yes.</p> <p>16 Q. Who drafted the survey?</p> <p>17 A. Dan McChurch, the director of</p> <p>18 training at the time.</p> <p>19 Q. Did you keep a copy of it?</p> <p>20 A. No. I forwarded them to home</p> <p>21 office as they requested once the survey</p> <p>22 was completed.</p> <p>23 Q. Okay. And then it says on</p>                                                                                                                                                                                       | <p style="text-align: right;">Page 172</p> <p>1 into the training coordinator and</p> <p>2 forwarded to home office. We discussed</p> <p>3 the most consistently asked question was</p> <p>4 about what did they think about their</p> <p>5 management team, which consists of</p> <p>6 myself, Tommy, and the other three</p> <p>7 associates. And the consistent answer</p> <p>8 was more of the associates not willing to</p> <p>9 uphold to standards, not willing to</p> <p>10 change, even comments that were made</p> <p>11 about I want to see them fail, I'm not</p> <p>12 going to help them, it is what it is.</p> <p>13 Q. So basically it sounds like</p> <p>14 to me that the hourly people are saying</p> <p>15 the home management team cannot work</p> <p>16 together. Is that what you're saying?</p> <p>17 A. No. What I'm saying is that</p> <p>18 they recognized that there were acts</p> <p>19 taking place that should not have taken</p> <p>20 place with myself being the general</p> <p>21 manager and my associate managers going</p> <p>22 against policies that I have, commenting</p> <p>23 against those policies, which they</p> |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 173</p> <p>1 shouldn't do, instead of enforcing them.</p> <p>2 <b>Q. All right. So what did you</b></p> <p>3 <b>say to them on April the 5th if that's</b></p> <p>4 <b>what the surveys showed?</b></p> <p>5 A. We just discussed the issues</p> <p>6 and we discussed the fact of the</p> <p>7 structure of the restaurant, and I had to</p> <p>8 go into a little depth with the fact that</p> <p>9 I did not know any members of the</p> <p>10 management team prior to my coming</p> <p>11 there. So I did nothing to hinder anyone</p> <p>12 else's career and that I needed for them</p> <p>13 to get on board.</p> <p>14 (Whereupon, a discussion off</p> <p>15 the record was held.)</p> <p>16 <b>Q. Did you evaluate any of your</b></p> <p>17 <b>associate managers while you were in</b></p> <p>18 <b>Gardendale?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. Do you recall what kind of</b></p> <p>21 <b>evaluations you gave her?</b></p> <p>22 A. Not completely, no.</p> <p>23 <b>Q. If an associate manager has a</b></p> | <p style="text-align: right;">Page 175</p> <p>1 <b>been to go to Mr. Phillips?</b></p> <p>2 A. If I couldn't resolve it with</p> <p>3 Rich?</p> <p>4 <b>Q. Right.</b></p> <p>5 A. Then yes, Mr. Phillips.</p> <p>6 <b>Q. All right. So back to the</b></p> <p>7 <b>evaluation, what we are referring to in</b></p> <p>8 <b>Exhibit -- tell me what number that is?</b></p> <p>9 A. This one?</p> <p>10 <b>Q. Yes.</b></p> <p>11 A. 4.</p> <p>12 <b>Q. Exhibit 4 is referring to --</b></p> <p>13 <b>I mean, excuse me. Exhibit 2, your</b></p> <p>14 <b>evaluation, is referring to Exhibit 4,</b></p> <p>15 <b>correct?</b></p> <p>16 A. No, ma'am.</p> <p>17 <b>Q. Okay. Then what was the plan</b></p> <p>18 <b>of action?</b></p> <p>19 A. Uhm.</p> <p>20 <b>Q. Okay. Let me just stop and</b></p> <p>21 <b>ask a better question. You gave him</b></p> <p>22 <b>Exhibit 4 on March -- what's the date of</b></p> <p>23 <b>that e-mail? The letter is dated March</b></p>                                                                                                                                                             |
| <p style="text-align: right;">Page 174</p> <p>1 <b>problem with their manager, they are</b></p> <p>2 <b>supposed to go to their district manager,</b></p> <p>3 <b>right?</b></p> <p>4 A. No.</p> <p>5 <b>Q. Who are they supposed to go</b></p> <p>6 <b>to?</b></p> <p>7 A. The management they have the</p> <p>8 problem with to try and resolve it, and</p> <p>9 if they can't, then the next one in</p> <p>10 charge.</p> <p>11 <b>Q. And if you have a problem</b></p> <p>12 <b>with your district manager who you can't</b></p> <p>13 <b>resolve it, you're supposed to go?</b></p> <p>14 A. To the regional</p> <p>15 vice-president.</p> <p>16 <b>Q. So if the associate managers</b></p> <p>17 <b>felt they had a problem with you that</b></p> <p>18 <b>they couldn't resolve, the appropriate</b></p> <p>19 <b>person for them to go to in this instance</b></p> <p>20 <b>would have been Rich?</b></p> <p>21 A. That's correct.</p> <p>22 <b>Q. And your appropriate person,</b></p> <p>23 <b>if you felt you had an issue, would have</b></p>              | <p style="text-align: right;">Page 176</p> <p>1 <b>30th, but you e-mailed it to him on what</b></p> <p>2 <b>date?</b></p> <p>3 A. April 2nd.</p> <p>4 <b>Q. April 2nd. All right. The</b></p> <p>5 <b>e-mail says it's an action plan. My</b></p> <p>6 <b>question is: You said that is not what</b></p> <p>7 <b>is being referred to in the evaluation.</b></p> <p>8 <b>Is there something else you sent him</b></p> <p>9 <b>between April the 2nd and the date of</b></p> <p>10 <b>your evaluation which looks like it might</b></p> <p>11 <b>be April the 5th?</b></p> <p>12 A. The action plan of the</p> <p>13 restaurant that this is referring to is a</p> <p>14 collected plan. It's what each</p> <p>15 individual associate promises to agree to</p> <p>16 in writing, and then I would also do my</p> <p>17 commitment to them, and that's what that</p> <p>18 plan is. It's not this. It's every</p> <p>19 associate turned in a plan of action, and</p> <p>20 then my commitment to them would be the</p> <p>21 top portion of it. That's what the</p> <p>22 action plan was. But this is not the</p> <p>23 action plan.</p> |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 177</p> <p>1 <b>Q.</b> All right. Let's read this</p> <p>2 sentence. It says, You have given me a</p> <p>3 plan of action that includes reaching out</p> <p>4 to others in your organization for</p> <p>5 suggestions that will improve your</p> <p>6 leadership skills. In this letter,</p> <p>7 that's Exhibit 4, you tell him I have</p> <p>8 solicited the assistance of Mr. Kevin</p> <p>9 Dilley and Dan McChurch from Home Office</p> <p>10 Management Development Department on</p> <p>11 different exercises that I may be able to</p> <p>12 use to break the communication barrier</p> <p>13 between myself and the management team of</p> <p>14 this unit.</p> <p>15 A. That's communication, but</p> <p>16 this isn't the action plan. This is just</p> <p>17 the communication between Rich and I.</p> <p>18 This is not the action plan itself.</p> <p>19 <b>Q.</b> Well, what were you planning</p> <p>20 to do to improve your leadership skills?</p> <p>21 A. The action plan was more to</p> <p>22 speak with the training department just</p> <p>23 to get a better understanding because</p> | <p style="text-align: right;">Page 179</p> <p>1 for contacting them.</p> <p>2 <b>Q.</b> Well, then here's my next</p> <p>3 point: The next sentence says, Your</p> <p>4 action plan is a good step, but you first</p> <p>5 must realize there is a serious problem</p> <p>6 and may be very self-analytical in how</p> <p>7 you're going to change some behaviors to</p> <p>8 regain the trust, respect, and</p> <p>9 credibility with your managers.</p> <p>10 So what behaviors were you,</p> <p>11 yourself, going to have to change to</p> <p>12 regain the trust, respect, and</p> <p>13 credibility with your managers?</p> <p>14 A. It wasn't behaviors as far as</p> <p>15 personal behaviors. It was other methods</p> <p>16 of getting the work done through your</p> <p>17 management staff versus having to be in</p> <p>18 constant frustration with them.</p> <p>19 <b>Q.</b> Well, it says next, you must</p> <p>20 be more approachable, listen to</p> <p>21 understand, and give clear direction, and</p> <p>22 your planning skills need improving?</p> <p>23 A. And, again, that came based</p>                                  |
| <p style="text-align: right;">Page 178</p> <p>1 there was so many issues with behaviors</p> <p>2 and there were blatant issues of behavior</p> <p>3 to try and communicate better to try and</p> <p>4 resolve those issues.</p> <p>5 <b>Q.</b> Did you have any blatant</p> <p>6 issues of behavior?</p> <p>7 A. I don't understand the</p> <p>8 question.</p> <p>9 <b>Q.</b> Did you have any blatant</p> <p>10 issues of behavior?</p> <p>11 A. I need you to be more</p> <p>12 specific for me.</p> <p>13 <b>Q.</b> You just said you're going to</p> <p>14 resolve the blatant issues of behavior?</p> <p>15 A. Yes.</p> <p>16 <b>Q.</b> Okay. I'm asking you: Did</p> <p>17 you personally have any blatant issues of</p> <p>18 behavior?</p> <p>19 A. Behaviors that I needed</p> <p>20 addressed or behaviors that I addressed?</p> <p>21 <b>Q.</b> That you needed to address</p> <p>22 yourself?</p> <p>23 A. No. That wasn't my reason</p>                                                                                                                                                                                                | <p style="text-align: right;">Page 180</p> <p>1 off of feedback that I was not physically</p> <p>2 there, which, again, I proved that I</p> <p>3 was. And those were his comments to me.</p> <p>4 <b>Q.</b> But he's your district</p> <p>5 manager. If he's told you you need to be</p> <p>6 more approachable, listen to understand,</p> <p>7 give clear direction, and planning skills</p> <p>8 -- your planning skills need improving,</p> <p>9 then you're supposed to try to address</p> <p>10 his evaluation of you, are you not?</p> <p>11 A. And that's my reason for</p> <p>12 reaching out to others just to find out</p> <p>13 if there was other methods or anything</p> <p>14 other than what I was implementing that</p> <p>15 may assist in that.</p> <p>16 <b>Q.</b> Why did he tell you to quit</p> <p>17 being so defensive and argumentative?</p> <p>18 A. That was his opinion.</p> <p>19 <b>Q.</b> Well, he is your district</p> <p>20 manager, and that was -- his opinion was</p> <p>21 you were too defensive and argumentative?</p> <p>22 A. Not that I was aware of.</p> <p>23 <b>Q.</b> Well, you're aware of it as</p> |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 181</p> <p>1 of this date, right?</p> <p>2 A. That's as he documented here,</p> <p>3 but my demeanor is not defensive or</p> <p>4 argumentative.</p> <p>5 Q. You don't perceive yourself</p> <p>6 as defensive or argumentative?</p> <p>7 A. No. I think that I do think</p> <p>8 things out, though, and I don't just say</p> <p>9 yes because you say it should be yes.</p> <p>10 Q. Well, if your district</p> <p>11 manager has told you you needed to listen</p> <p>12 better, be more approachable, and improve</p> <p>13 your planning skills and give clear</p> <p>14 directions, if you disagreed with him, I</p> <p>15 guess your response would be you're not</p> <p>16 going to do it?</p> <p>17 A. No, ma'am. If we can work</p> <p>18 that out, as I have done -- and what this</p> <p>19 doesn't show is that the conversation</p> <p>20 after this with Ron Phillips and Rich and</p> <p>21 myself followed this evaluation.</p> <p>22 Q. All right. You had a meeting</p> <p>23 with Ron and Rich after this evaluation?</p>                       | <p style="text-align: right;">Page 183</p> <p>1 you?</p> <p>2 A. Which question?</p> <p>3 Q. Have you discussed this issue</p> <p>4 with Dwight?</p> <p>5 A. Yes, I do.</p> <p>6 Q. And how do you know that?</p> <p>7 A. Because I asked him.</p> <p>8 Q. You asked who?</p> <p>9 A. I asked Rich Alexander.</p> <p>10 Q. You asked Rich Alexander, Did</p> <p>11 you ask them if they discussed this with</p> <p>12 me?</p> <p>13 A. Yes.</p> <p>14 Q. And he said no, I didn't ask</p> <p>15 that question?</p> <p>16 A. Yes. And I expressed that I</p> <p>17 didn't think that that was the correct</p> <p>18 way to do it because he wasn't allowing</p> <p>19 the team to form because it was too easy</p> <p>20 for them to come outside of the team than</p> <p>21 come inside.</p> <p>22 Q. You were never successful for</p> <p>23 working out your differences with the</p>                                                                                                                                                                                                            |
| <p style="text-align: right;">Page 182</p> <p>1 A. That's correct.</p> <p>2 Q. Okay. And did you say I</p> <p>3 disagree with everything Rich has said</p> <p>4 about me in my evaluation?</p> <p>5 A. No. I explained my</p> <p>6 disagreeing with the meeting that took</p> <p>7 place is not common practice and has</p> <p>8 never happened because I asked the</p> <p>9 question of the other general managers,</p> <p>10 and I asked Ron Phillips the same</p> <p>11 question. And I also did not agree with</p> <p>12 the fact that if there was an issue, they</p> <p>13 were allowed to go to Rich and say, I</p> <p>14 have an issue, and then Rich not ask the</p> <p>15 first question, have you discussed this</p> <p>16 issue with Dwight. I think that gave</p> <p>17 them too much leeway to not have to be in</p> <p>18 compliance, because if they just did not</p> <p>19 like it, it was easier to call him and</p> <p>20 get him involved versus communicating</p> <p>21 with me.</p> <p>22 Q. You don't know whether or not</p> <p>23 he asked them that question, though, do</p> | <p style="text-align: right;">Page 184</p> <p>1 team at Gardendale, were you?</p> <p>2 A. I was very successful with</p> <p>3 those that were not trying to be</p> <p>4 manipulative.</p> <p>5 Q. Which management member were</p> <p>6 you successful with?</p> <p>7 A. Well, the management team</p> <p>8 itself was a team. I had issues with the</p> <p>9 behaviors, but, again, their performances</p> <p>10 were improved. So if you're basing this</p> <p>11 assessment on the performances, then,</p> <p>12 yes, we've had good performances, because</p> <p>13 they were improved. And towards the end,</p> <p>14 their behaviors actually was not as vile</p> <p>15 but still needed addressing.</p> <p>16 Q. All right. So I want to make</p> <p>17 sure I get this straight. You think that</p> <p>18 some of the managers' behavior was vile,</p> <p>19 but you don't think that you had any</p> <p>20 issues with your behavior in return?</p> <p>21 A. As a general manager, it was</p> <p>22 my responsibility to run the operation</p> <p>23 and to be analytical and to make</p> |

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| <p style="text-align: right;">Page 185</p> <p>1 decisions.</p> <p>2 <b>Q. And to be there?</b></p> <p>3 A. As I was.</p> <p>4 <b>Q. And to tell the truth?</b></p> <p>5 A. As I do.</p> <p>6 <b>Q. And to manage food cost?</b></p> <p>7 A. As I did.</p> <p>8 <b>Q. And to manage labor?</b></p> <p>9 A. As I did.</p> <p>10 <b>Q. And most of those things are</b></p> <p>11 <b>objective things that can be looked at to</b></p> <p>12 <b>determine if you did or not, correct?</b></p> <p>13 A. They can be looked at, but</p> <p>14 you also -- those things are looked at</p> <p>15 not just singly. They are looked at</p> <p>16 collectively.</p> <p>17 <b>Q. Well, and the district</b></p> <p>18 <b>manager's job and the regional</b></p> <p>19 <b>vice-president's job is to make sure if,</b></p> <p>20 <b>for whatever excuse is given, those</b></p> <p>21 <b>objective criteria are not being met, to</b></p> <p>22 <b>make sure that they get a management team</b></p> <p>23 <b>in place that can meet them. You</b></p>                                                                                                          | <p style="text-align: right;">Page 187</p> <p>1 <b>Q. And you may have a</b></p> <p>2 <b>disagreement on the root of the</b></p> <p>3 <b>situation, but you respect the fact that</b></p> <p>4 <b>in their role as district manager or</b></p> <p>5 <b>regional vice-president or general</b></p> <p>6 <b>manager or whatever the person's title</b></p> <p>7 <b>is, in their position, whatever they</b></p> <p>8 <b>determine is the root of the problem,</b></p> <p>9 <b>then they need to address it?</b></p> <p>10 A. To address, yes.</p> <p>11 <b>Q. Now, you spoke to Ron</b></p> <p>12 <b>Phillips after this evaluation about the</b></p> <p>13 <b>meeting, and it was a meeting between you</b></p> <p>14 <b>and Dwight and Ron according to your</b></p> <p>15 <b>recollection; is that right?</b></p> <p>16 A. It was myself, Rich, and</p> <p>17 Ron. You said Dwight, but Rich.</p> <p>18 <b>Q. Sorry. Yourself -- you are</b></p> <p>19 <b>Dwight, though, right?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. Dwight, Rich, and Ron?</b></p> <p>22 A. Yes.</p> <p>23 <b>Q. The three of you met?</b></p> |
| <p style="text-align: right;">Page 186</p> <p>1 <b>understand that, don't you?</b></p> <p>2 A. No, ma'am. It is their</p> <p>3 responsibility to make sure that if</p> <p>4 something was out of place or out of</p> <p>5 order or standards were not being met, to</p> <p>6 evaluate and to coach and to work toward</p> <p>7 making sure that that happens.</p> <p>8 <b>Q. And if the evaluation and the</b></p> <p>9 <b>coaching did not work, then there are</b></p> <p>10 <b>mechanisms in place to deal with those</b></p> <p>11 <b>situations?</b></p> <p>12 A. What are you asking?</p> <p>13 <b>Q. Well, I'm asking -- at</b></p> <p>14 <b>Cracker Barrel they have a procedure</b></p> <p>15 <b>where you are written up and given a</b></p> <p>16 <b>final warning and then terminated. Other</b></p> <p>17 <b>places you've worked have different ways</b></p> <p>18 <b>of doing it, I guess?</b></p> <p>19 A. Well, no, that's not just</p> <p>20 their procedure to document and to</p> <p>21 terminate. Again, if there is an issue</p> <p>22 or if there's a situation, you try and</p> <p>23 get to the root of the situation.</p> | <p style="text-align: right;">Page 188</p> <p>1 A. Yes.</p> <p>2 <b>Q. After your evaluation in the</b></p> <p>3 <b>beginning of April?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. Did you take notes at that</b></p> <p>6 <b>meeting?</b></p> <p>7 A. No.</p> <p>8 <b>Q. Was there any e-mails about</b></p> <p>9 <b>it?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. Okay. Who sent an e-mail?</b></p> <p>12 A. I requested it in the</p> <p>13 meeting.</p> <p>14 <b>Q. I didn't understand that.</b></p> <p>15 <b>Say that again?</b></p> <p>16 A. I requested the meeting with</p> <p>17 Rod and Rich.</p> <p>18 <b>Q. You sent an e-mail requesting</b></p> <p>19 <b>the meeting?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. Do you have a copy of the</b></p> <p>22 <b>e-mail where you did that?</b></p> <p>23 A. No.</p>                                                                                                                                                                                                                                                                                                     |

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| <p style="text-align: right;">Page 189</p> <p>1 <b>Q. What was your e-mail account</b><br/> 2 <b>at the time?</b><br/> 3 A. It's the exact same for GM.<br/> 4 Unit 237 is the same for any e-mails that<br/> 5 comes in and out.<br/> 6 <b>Q. So you sent an e-mail</b><br/> 7 <b>requesting a meeting to your</b><br/> 8 <b>recollection, and the meeting occurred?</b><br/> 9 A. Yes.<br/> 10 <b>Q. Where was the meeting?</b><br/> 11 A. Gardendale restaurant.<br/> 12 <b>Q. Who was in attendance?</b><br/> 13 A. Rich Alexander, Ron Phillips,<br/> 14 and myself.<br/> 15 <b>Q. What was the result of the</b><br/> 16 <b>meeting?</b><br/> 17 A. Ron's words were for Rich to<br/> 18 remember that I was the operations and to<br/> 19 back up and let me operate.<br/> 20 <b>Q. All right. And this happened</b><br/> 21 <b>in approximately what month?</b><br/> 22 A. It was a couple of days after<br/> 23 this evaluation. I don't exactly</p>                                     | <p style="text-align: right;">Page 191</p> <p>1 <b>Gardendale?</b><br/> 2 A. No. The issues continued to<br/> 3 grow with the policy violations and my<br/> 4 contact to Rich.<br/> 5 <b>Q. All right. What do you mean</b><br/> 6 <b>policy violations?</b><br/> 7 A. Security policies being<br/> 8 violated.<br/> 9 <b>Q. What would those be?</b><br/> 10 A. The front door being open<br/> 11 after we're closed. Tommy at the time<br/> 12 was married, and he was allowing another<br/> 13 young lady inside the facility after it<br/> 14 was secured that was not an employee.<br/> 15 And one day I came up to the restaurant,<br/> 16 and she was not an employee in the<br/> 17 restaurant, way after closing, and when I<br/> 18 questioned it, I did find out that she<br/> 19 was a former employee, but she was not<br/> 20 allowed to be in the facility.<br/> 21 <b>Q. Who was it?</b><br/> 22 A. I don't recall her name.<br/> 23 <b>Q. When did this occur?</b></p> |
| <p style="text-align: right;">Page 190</p> <p>1 remember. It was just a couple of days<br/> 2 after this evaluation.<br/> 3 <b>Q. So that would have been in</b><br/> 4 <b>April?</b><br/> 5 A. Possibly, or the end of<br/> 6 March. I don't know the dates.<br/> 7 <b>Q. If you're looking at that</b><br/> 8 <b>evaluation, it looks like it happened</b><br/> 9 <b>sometime before the 5th of April is what</b><br/> 10 <b>I'm looking at?</b><br/> 11 A. Yes.<br/> 12 <b>Q. And your letter to Rich was</b><br/> 13 <b>dated March 30th. So sometime between</b><br/> 14 <b>March the 30th and April the 5th you have</b><br/> 15 <b>your evaluation, and thereafter you send</b><br/> 16 <b>an e-mail?</b><br/> 17 A. Yes.<br/> 18 <b>Q. And shortly thereafter you</b><br/> 19 <b>had the meeting to which you referred?</b><br/> 20 A. Yes.<br/> 21 <b>Q. All right. After the</b><br/> 22 <b>meeting, were you able to implement</b><br/> 23 <b>successfully your action plan at</b></p> | <p style="text-align: right;">Page 192</p> <p>1 A. It was shortly after. I'm<br/> 2 not sure exactly, but that was one of the<br/> 3 incidences.<br/> 4 <b>Q. Did you write it up?</b><br/> 5 A. No. I was told by Rich that<br/> 6 he would handle it, which I didn't<br/> 7 understand, because I was going to<br/> 8 document the violation.<br/> 9 <b>Q. Did you call Ron Phillips</b><br/> 10 <b>about this?</b><br/> 11 A. No. Earlier comments by<br/> 12 Rich, don't forget who you work for, and<br/> 13 things of that nature, just led me to<br/> 14 think that when he said he would take<br/> 15 care of it, that he would take care of<br/> 16 it. And I later found out that he did<br/> 17 not.<br/> 18 <b>Q. What do you mean?</b><br/> 19 A. The documentation wasn't<br/> 20 presented.<br/> 21 <b>Q. Well, do you know if he</b><br/> 22 <b>talked to the young lady or Tommy?</b><br/> 23 A. I know he talked to other</p>                                         |

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| <p style="text-align: right;">Page 193</p> <p>1 hourly employees about it, but I don't<br/>2 know if he spoke -- when he said he'll<br/>3 take care of it, then the only way that I<br/>4 know he talked to Ms. Linda, another<br/>5 hourly employee, was because she<br/>6 physically relayed the conversation back<br/>7 to me.<br/>8 <b>Q. So, in other words, he did</b><br/>9 <b>some sort of investigation into it by</b><br/>10 <b>talking to others, but you don't know who</b><br/>11 <b>all?</b><br/>12 A. Correct.<br/>13 <b>Q. Okay. All right. Anything</b><br/>14 <b>else other than that example?</b><br/>15 A. Too numerous. Can you be<br/>16 more specific?<br/>17 <b>Q. Well, if you're complaining</b><br/>18 <b>about any of them here today, you know,</b><br/>19 <b>just tell me. I mean, if you're not, you</b><br/>20 <b>don't have to tell me. But I'm just</b><br/>21 <b>trying to figure out -- my question to</b><br/>22 <b>you was: After the meeting, were you</b><br/>23 <b>able to operate the store to your</b></p> | <p style="text-align: right;">Page 195</p> <p>1 A. No. He placed the phone down<br/>2 but the phone was not hung up.<br/>3 <b>Q. So you heard the remark?</b><br/>4 A. Portions of it, only portions<br/>5 of it.<br/>6 <b>Q. I don't understand what</b><br/>7 <b>you're saying. Tell me exactly what</b><br/>8 <b>occurred. You are on the telephone?</b><br/>9 A. Yes.<br/>10 <b>Q. Tommy has answered the</b><br/>11 <b>telephone?</b><br/>12 A. That's correct.<br/>13 <b>Q. And Tommy is located at the</b><br/>14 <b>store?</b><br/>15 A. Cashier's stand, correct.<br/>16 <b>Q. Where are you located?</b><br/>17 A. I was at home.<br/>18 <b>Q. In Birmingham?</b><br/>19 A. Yes.<br/>20 <b>Q. Okay. All right. You called</b><br/>21 <b>to say what?</b><br/>22 A. I had left the day prior ill,<br/>23 and when I got home, I found out that</p>                                                                                                                                                                         |
| <p style="text-align: right;">Page 194</p> <p>1 <b>satisfaction and manage your management,</b><br/>2 <b>and you said, no, there continued to be</b><br/>3 <b>policy and security breaches.</b><br/>4 A. Well, prior to April, a<br/>5 discriminative remark was made by Tommy<br/>6 Patterson where I contacted human<br/>7 resources, and I lodged an open door<br/>8 review which I was not allowed to conduct<br/>9 because it involved me.<br/>10 <b>Q. Wait. Let's just stop.</b><br/>11 A. Okay.<br/>12 <b>Q. So prior to the April -- a</b><br/>13 <b>remark had been made?</b><br/>14 A. Yes.<br/>15 <b>Q. By Tommy?</b><br/>16 A. Correct.<br/>17 <b>Q. To you?</b><br/>18 A. I was on the phone, but he<br/>19 was talking to the shift leader, Penny<br/>20 Schmidt at the time.<br/>21 <b>Q. Was it something you heard or</b><br/>22 <b>was it something that happened after he</b><br/>23 <b>hung up the phone with you?</b></p>                                                                                                       | <p style="text-align: right;">Page 196</p> <p>1 there was a death in my family.<br/>2 <b>Q. One of those you told me</b><br/>3 <b>about?</b><br/>4 A. Yes. I just don't know -- I<br/>5 can't remember exactly which one.<br/>6 <b>Q. You've told me -- I thought</b><br/>7 <b>you said Viola had died in March of '05,</b><br/>8 <b>but I can't now tell my note. You said</b><br/>9 <b>it was either Viola Dunbar or Sherry</b><br/>10 <b>Thompson. Those are your aunts?</b><br/>11 A. Yes.<br/>12 <b>Q. First you had said your</b><br/>13 <b>mother, but you said she died before you</b><br/>14 <b>went to Cracker Barrel?</b><br/>15 A. Correct. But I did not know<br/>16 when exactly, what month they passed in.<br/>17 <b>Q. Well, I'm just trying to</b><br/>18 <b>figure out. Okay. You had gotten notice</b><br/>19 <b>that either Viola Dunbar has passed away</b><br/>20 <b>or Sherry Thompson has passed away?</b><br/>21 A. That's correct.<br/>22 <b>Q. Viola Dunbar is in South</b><br/>23 <b>Carolina?</b></p> |

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| <p style="text-align: right;">Page 197</p> <p>1 A. That's correct.</p> <p>2 Q. Which city did she live in,</p> <p>3 Florence, did you say?</p> <p>4 A. No.</p> <p>5 Q. Why did I write that down?</p> <p>6 A. I don't know. She was in a</p> <p>7 nursing home for a long period of time,</p> <p>8 so I don't know exactly where she</p> <p>9 resided.</p> <p>10 Q. Did you go to the funeral?</p> <p>11 A. Yes.</p> <p>12 Q. Where was the funeral?</p> <p>13 A. In South Carolina.</p> <p>14 Q. Okay. Was the funeral in</p> <p>15 Florence, South Carolina?</p> <p>16 A. No.</p> <p>17 Q. Why did I write down</p> <p>18 Florence, South Carolina?</p> <p>19 A. I don't know.</p> <p>20 Q. Did you say Sherry Thompson</p> <p>21 was in Athens, Georgia?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Do you know anybody</p>                                                                                                                      | <p style="text-align: right;">Page 199</p> <p>1 Dunbar?</p> <p>2 A. Again, I don't know which</p> <p>3 one.</p> <p>4 Q. Well, if you went to South</p> <p>5 Carolina for the funeral, I'm just trying</p> <p>6 to get you there.</p> <p>7 A. I'm trying to remember. Yes.</p> <p>8 Q. I mean, I don't know, but I</p> <p>9 asked you where did you go to the funeral</p> <p>10 when you were on the phone?</p> <p>11 A. That's correct.</p> <p>12 Q. You said you went to South</p> <p>13 Carolina?</p> <p>14 A. That's correct.</p> <p>15 Q. And if the only one of these</p> <p>16 two women that lived in South Carolina</p> <p>17 was Viola, it must have been her?</p> <p>18 A. That's correct.</p> <p>19 Q. We'll just -- Viola Dunbar we</p> <p>20 think is whose funeral you went to?</p> <p>21 A. Correct.</p> <p>22 Q. And she's your aunt?</p> <p>23 A. Correct.</p>                                                                                                                                                                                                 |
| <p style="text-align: right;">Page 198</p> <p>1 that lives in Florence, South Carolina?</p> <p>2 A. No.</p> <p>3 Q. Okay. Where in South</p> <p>4 Carolina does Ms. Dunbar live? That must</p> <p>5 be who died if you went to -- unless Ms.</p> <p>6 Thompson was buried in South Carolina?</p> <p>7 A. She was residing in the</p> <p>8 nursing home in Aikens, South Carolina</p> <p>9 when she passed. But the exact city</p> <p>10 where she resided, I'm not sure.</p> <p>11 Q. Well, that's irrelevant. I'm</p> <p>12 really just trying to get to --</p> <p>13 A. It was in Aikens, South</p> <p>14 Carolina.</p> <p>15 Q. Where did you go to the</p> <p>16 funeral?</p> <p>17 A. In Aikens.</p> <p>18 Q. Was Ms. Thompson buried in</p> <p>19 Aikens, South Carolina?</p> <p>20 A. No. She was buried in</p> <p>21 Athens, Georgia.</p> <p>22 Q. So then the funeral -- your</p> <p>23 aunt that passed away must have been Ms.</p> | <p style="text-align: right;">Page 200</p> <p>1 Q. So you call in to say I've</p> <p>2 had word that my aunt has passed?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. Now, that's where you</p> <p>5 were.</p> <p>6 A. I was on the phone. Tommy</p> <p>7 was also scheduled to work that day. And</p> <p>8 I just called to make sure that he was</p> <p>9 there and to give him word of what was</p> <p>10 happening. I was already scheduled off</p> <p>11 the following two days, which was my days</p> <p>12 off, and I was going to try and go up and</p> <p>13 find out what was going on and things of</p> <p>14 that nature, if he was going to be at the</p> <p>15 restaurant.</p> <p>16 Q. All right. Let me get this</p> <p>17 straight. You've gone home the day</p> <p>18 before sick. You're supposed to work the</p> <p>19 next day, but you're sick and your aunt</p> <p>20 has died. So you call in to make sure</p> <p>21 Tommy is there because he was scheduled</p> <p>22 to work that day, too. The next two days</p> <p>23 you were already scheduled off?</p> |

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## FREEDOM COURT REPORTING

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 201</p> <p>1 A. Correct.</p> <p>2 Q. Okay. And so you were</p> <p>3 calling in to say, I might not be back</p> <p>4 after those next two days, depending on</p> <p>5 what's going on?</p> <p>6 A. No. I was calling just to</p> <p>7 make them aware of the death so that once</p> <p>8 I got -- since I had just gotten news, I</p> <p>9 wanted to give them news so that we can</p> <p>10 plan accordingly for the funeral.</p> <p>11 Q. Okay.</p> <p>12 A. While on the phone with him I</p> <p>13 heard Penny Schmidt asking him if I was</p> <p>14 okay, and the reason -- because I left</p> <p>15 from work with the flu. I was at work</p> <p>16 sick, and she wasn't sure if I was -- she</p> <p>17 didn't know that there was a death. She</p> <p>18 thought I was still sick, and she just</p> <p>19 wanted to make sure that we had</p> <p>20 coverage. And I heard Penny ask if I was</p> <p>21 okay, and then that's when Tommy said to</p> <p>22 her that he has a death in his family.</p> <p>23 And she asked if I knew when the -- if he</p> | <p style="text-align: right;">Page 203</p> <p>1 Q. Okay. So you call. You take</p> <p>2 off your two days. You come back, and</p> <p>3 then you leave and go to the funeral?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. All right.</p> <p>6 A. I returned to work, and Penny</p> <p>7 was very frustrated and asked if she</p> <p>8 could speak with me.</p> <p>9 Q. This is two and a half days</p> <p>10 later, I'm guessing?</p> <p>11 A. Correct.</p> <p>12 Q. Okay.</p> <p>13 A. And asked if she could speak</p> <p>14 with me, and I said, yes, you know, it's</p> <p>15 okay. She was really angry and wasn't</p> <p>16 sure how to, you know, to hold the</p> <p>17 conversation with me. But I informed</p> <p>18 her, you know, as a supervisory member,</p> <p>19 you know, anything that you hear or know</p> <p>20 or have knowledge of, you have to talk to</p> <p>21 me about it, which she did. Then she</p> <p>22 completed the portion that I heard on the</p> <p>23 phone. She told me what was said.</p>                                                                                 |
| <p style="text-align: right;">Page 202</p> <p>1 knew when the funeral was and what -- if</p> <p>2 we needed to do anything to make any</p> <p>3 adjustments to the schedule. And before</p> <p>4 the phone disconnected itself, the only</p> <p>5 portion of the conversation I heard was</p> <p>6 don't blacks. I didn't hear the rest of</p> <p>7 the conversation.</p> <p>8 Q. All right. So he's hanging</p> <p>9 the phone up the whole time she's asking</p> <p>10 what was that about?</p> <p>11 A. Correct.</p> <p>12 Q. Okay.</p> <p>13 A. I got to work.</p> <p>14 Q. Wait a minute. So you go to</p> <p>15 work this same day?</p> <p>16 A. Not that day, no, my next</p> <p>17 scheduled day. I went back to work.</p> <p>18 Q. Did you go to the funeral in</p> <p>19 South Carolina?</p> <p>20 A. It wasn't two days after the</p> <p>21 death, ma'am. Yes, but it wasn't that</p> <p>22 same week. It was the following week.</p> <p>23 This was like a Tuesday or a Wednesday.</p>                                                                                                | <p style="text-align: right;">Page 204</p> <p>1 Q. All right. Hang on. Let me</p> <p>2 get to that in a minute. All right. So</p> <p>3 you hear, Don't blacks. But I guess you</p> <p>4 don't think anything else about it until</p> <p>5 you get to work and she wants to talk to</p> <p>6 you about something, but you don't know</p> <p>7 what it is she wants to talk to you about</p> <p>8 until she tells you?</p> <p>9 A. No, I didn't know what the</p> <p>10 rest of the conversation was. Because</p> <p>11 when I called back, Tommy didn't come</p> <p>12 back to the phone.</p> <p>13 Q. That's what I mean. All</p> <p>14 right. So you hear two words. You go on</p> <p>15 about finishing getting well or being off</p> <p>16 or whatever happened in those two and a</p> <p>17 half days?</p> <p>18 A. Well, after the phone</p> <p>19 disconnected and when I heard that, I</p> <p>20 called back and asked to speak with</p> <p>21 Tommy. They said that Tommy and Penny</p> <p>22 was in the midst of a conversation. And</p> <p>23 then I asked them to have him to call me.</p> |

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## FREEDOM COURT REPORTING

| Page 205                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 207                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 <b>Q. Okay.</b></p> <p>2 A. He did not call that evening</p> <p>3 and then I didn't hear or talk to him for</p> <p>4 several days, because when I got back, he</p> <p>5 was off.</p> <p>6 <b>Q. That's what I'm saying. You</b></p> <p>7 <b>don't know anything about what the</b></p> <p>8 <b>conversation is about at all. You don't</b></p> <p>9 <b>talk to anybody?</b></p> <p>10 A. Correct.</p> <p>11 <b>Q. Until you come back to work</b></p> <p>12 <b>two and a half days later and Penny</b></p> <p>13 <b>approaches you and says she's frustrated</b></p> <p>14 <b>about something and wants to talk to you</b></p> <p>15 <b>about it?</b></p> <p>16 A. Yes.</p> <p>17 <b>Q. But when she says that, you</b></p> <p>18 <b>don't know what it is going to be at that</b></p> <p>19 <b>point; is that right?</b></p> <p>20 A. That's correct.</p> <p>21 <b>Q. So then you tell her, you</b></p> <p>22 <b>need to tell me, and then what does she</b></p> <p>23 <b>say?</b></p>                                                                                                                    | <p>1 because I had already heard a portion of</p> <p>2 it, I called home office to get advice on</p> <p>3 how to handle it because it also</p> <p>4 frustrated me. There were personal --</p> <p>5 again, there were behaviors before that</p> <p>6 were, I felt, against the person, the</p> <p>7 color, and not against the person, the</p> <p>8 position.</p> <p>9 <b>Q. I mean, specific events, or</b></p> <p>10 <b>you just felt that way?</b></p> <p>11 A. No, specific events. So I</p> <p>12 called home office and informed them what</p> <p>13 was going on, and they said I had to</p> <p>14 immediately remove myself from the open</p> <p>15 door policy because the comment towards</p> <p>16 me also offended myself as well as Ms.</p> <p>17 Schmidt.</p> <p>18 <b>Q. So, in other words, what you</b></p> <p>19 <b>were saying is you called to say Ms.</b></p> <p>20 <b>Schmidt has said this, She is frustrated</b></p> <p>21 <b>and offended, and I'm offended as well.</b></p> <p>22 <b>And they said, If you're saying you're</b></p> <p>23 <b>offended as well, then somebody else</b></p> |
| Page 206                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page 208                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p>1 A. She told me that she was</p> <p>2 angry at a comment that was made, and I</p> <p>3 asked who made the comment and what was</p> <p>4 the comment. She said it was a racial</p> <p>5 comment. She still had not said who said</p> <p>6 what. So before we continued on, I told</p> <p>7 her that I was going to have to start the</p> <p>8 open door because of the nature of her</p> <p>9 conversation.</p> <p>10 She stated that while Tommy</p> <p>11 was on phone with me and she was asking</p> <p>12 about me being sick, she found out that,</p> <p>13 you know, I had a death in the family,</p> <p>14 and she was trying to find out if we</p> <p>15 needed any additional coverage to change</p> <p>16 the schedule a week or two down the road</p> <p>17 to try to meet any funeral</p> <p>18 accommodations. And that's when she told</p> <p>19 me that he made the comment when she</p> <p>20 asked if he knew when the funeral would</p> <p>21 be, that don't blacks bury their kind on</p> <p>22 the weekends, that way they can party. I</p> <p>23 asked her to stop right there, and</p> | <p>1 <b>needs to look into this?</b></p> <p>2 A. Correct.</p> <p>3 <b>Q. Keep going. I just wanted to</b></p> <p>4 <b>make sure I understood what you were</b></p> <p>5 <b>saying.</b></p> <p>6 A. Okay. Well, they told me</p> <p>7 that -- for me to notify Rich Alexander,</p> <p>8 which I did, and that was on March the</p> <p>9 5th. So I called home office on 4/3 --</p> <p>10 I'm sorry, on 3/4. So I talked to him</p> <p>11 the following day because he was out of</p> <p>12 town. He came back in town.</p> <p>13 <b>Q. How can you remember</b></p> <p>14 <b>specifically that's the day you talked to</b></p> <p>15 <b>him? Do you have a note of it or</b></p> <p>16 <b>something?</b></p> <p>17 A. Well, when I filed the EEOC</p> <p>18 complaint, they asked for that date</p> <p>19 specifically.</p> <p>20 <b>Q. How did you tell them that?</b></p> <p>21 <b>Did you have a note of it or something?</b></p> <p>22 A. No. I knew when I filed --</p> <p>23 when I called, because they initiated a</p>                                                                                      |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 209</p> <p>1 open check, and you just have to call and</p> <p>2 ask about the open check, the date and</p> <p>3 time.</p> <p>4 <b>Q. Okay. So you call Rich?</b></p> <p>5 A. And I informed him.</p> <p>6 <b>Q. About what Penny said Tommy</b></p> <p>7 <b>said?</b></p> <p>8 A. Yes, and also from what I</p> <p>9 heard, the portion that I heard on the</p> <p>10 telephone myself.</p> <p>11 <b>Q. Okay.</b></p> <p>12 A. And I expressed my</p> <p>13 frustrations with him, again, because</p> <p>14 there were other racial comments made</p> <p>15 prior to this.</p> <p>16 <b>Q. Okay. Now, this is the first</b></p> <p>17 <b>I've heard of any of that, so we're going</b></p> <p>18 <b>to have to slow down and go through that</b></p> <p>19 <b>here in a minute.</b></p> <p>20 A. Okay.</p> <p>21 <b>Q. What are the other racial</b></p> <p>22 <b>comments that you claim were made prior</b></p> <p>23 <b>to this and by whom?</b></p>               | <p style="text-align: right;">Page 211</p> <p>1 it.</p> <p>2 <b>Q. How did you address it?</b></p> <p>3 A. I asked Bill to please</p> <p>4 refrain from those type of comments. And</p> <p>5 at that time I also told Tommy that those</p> <p>6 were not the kind of conversations that</p> <p>7 he should be having because that can</p> <p>8 cause other problems.</p> <p>9 <b>Q. Well, I mean, did Tommy say</b></p> <p>10 <b>anything or was he just standing there</b></p> <p>11 <b>when the man said it?</b></p> <p>12 A. I didn't hear what Tommy</p> <p>13 said. I started to walk off, but I</p> <p>14 turned around and I addressed it with</p> <p>15 Bill.</p> <p>16 <b>Q. So this man, who is a third</b></p> <p>17 <b>party, said it in your presence and in</b></p> <p>18 <b>Tommy's presence?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. And you didn't hear Tommy say</b></p> <p>21 <b>anything, but you started to walk off,</b></p> <p>22 <b>and you turned around and you decided to</b></p> <p>23 <b>tell the man immediately, right?</b></p>                               |
| <p style="text-align: right;">Page 210</p> <p>1 A. There was a guest. His name</p> <p>2 is -- I'm sorry. He's a vendor. He</p> <p>3 works for Alabama Power, and I just know</p> <p>4 his first name. His name is Bill. He</p> <p>5 was in a conversation with Tommy, and as</p> <p>6 I was walking past, his comment to Tommy</p> <p>7 was no black man should be in charge of</p> <p>8 this many whites.</p> <p>9 <b>Q. And you heard this?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. Did you do an open door</b></p> <p>12 <b>investigation on this?</b></p> <p>13 A. By that being a vendor, I did</p> <p>14 call home office to let them know about</p> <p>15 the comment and Bill's behaviors.</p> <p>16 <b>Q. Who did you talk to?</b></p> <p>17 A. The intake specialist. Her</p> <p>18 name is Vonn Barr.</p> <p>19 <b>Q. B-a-r-r?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. And what did she say?</b></p> <p>22 A. She asked me if I addressed</p> <p>23 it, and I explained yes, that I addressed</p> | <p style="text-align: right;">Page 212</p> <p>1 A. Yes.</p> <p>2 <b>Q. And what did he say?</b></p> <p>3 A. He explained how he had been</p> <p>4 a vendor there for years and he can come</p> <p>5 and go as he please. Tommy had no issues</p> <p>6 with him when he was a general manager.</p> <p>7 And I relayed that information on to home</p> <p>8 office when I spoke with them.</p> <p>9 <b>Q. Okay. Did you ever have</b></p> <p>10 <b>any -- see hide nor tail of this guy Bill</b></p> <p>11 <b>ever again?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. When was the next time you</b></p> <p>14 <b>had a chance to see him?</b></p> <p>15 A. He came to the restaurant a</p> <p>16 couple of weeks later, and he entered</p> <p>17 into the kitchen, but he wasn't on</p> <p>18 vendor's business, which means should he</p> <p>19 get hurt or something, we were solely</p> <p>20 responsible because he wasn't there on</p> <p>21 company business. I asked him to please</p> <p>22 not enter the kitchen unless he was on</p> <p>23 company business because other employees</p> |

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## FREEDOM COURT REPORTING

| Page 213                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 215                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| <p>1 were telling me that -- he's an older<br/>2 gentleman, and he was physically touching<br/>3 them in flirtation ways. So in order to<br/>4 make sure they were protected, I asked<br/>5 him to stay on the other side of the wall<br/>6 unless he was physically there on company<br/>7 business.</p> <p>8 <b>Q. Did you write that up?</b><br/>9 A. No. I contacted Rich -- no.<br/>10 I'm sorry. I contacted home office again<br/>11 about him physically coming into the<br/>12 restaurant. But Rich Alexander showed up<br/>13 minutes after the incident, so I<br/>14 addressed it with Rich.</p> <p>15 <b>Q. Just on his regular --</b><br/>16 A. Yes.</p> <p>17 <b>Q. They drop -- as I understand</b><br/>18 <b>it, district managers drop in</b><br/>19 <b>purposefully when you don't know they are</b><br/>20 <b>coming so they can check things?</b><br/>21 A. Scheduled and unscheduled.<br/>22 <b>Q. Correct. They do some</b><br/>23 <b>scheduled that you know they are coming</b></p> | <p>1 discussion. I explained to him what had<br/>2 happened and that I did contact home<br/>3 office and they said for me to inform him<br/>4 of the incident. He just so happened to<br/>5 walk in, but I was also to express to the<br/>6 gentleman, any other behaviors, he was<br/>7 not going to be allowed back into the<br/>8 facility. At that point the gentleman<br/>9 got up and came to the back of the dining<br/>10 room where Rich and I were standing and<br/>11 commented that he'll be here when I'm far<br/>12 gone, which means at the restaurant, when<br/>13 I'm far gone, and no black man will ever<br/>14 tell him what to do.</p> <p>15 At which point it shocked me<br/>16 because Rich didn't intervene. And as a<br/>17 district manager, that was the perfect<br/>18 time, in my opinion, for him to<br/>19 intervene, especially when I told him<br/>20 about the incidents earlier. And he did<br/>21 nothing. His comments were, That's just<br/>22 Bill. Carl, who was the general manager<br/>23 prior to myself, let him do things and</p> |
| Page 214                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page 216                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>1 <b>and some unscheduled?</b><br/>2 A. Correct.</p> <p>3 <b>Q. Okay. So this is scheduled</b><br/>4 <b>or unscheduled?</b><br/>5 A. Unscheduled. He lived in<br/>6 Gardendale, so we may see him at any time<br/>7 because he lives right around the corner<br/>8 of the restaurant. That's where he<br/>9 stopped to get his coffee before he hit<br/>10 the road and for different reasons.</p> <p>11 <b>Q. So when you were in</b><br/>12 <b>Gardendale, you saw him specifically more</b><br/>13 <b>than you would have seen him in</b><br/>14 <b>Montgomery, for example, because he lives</b><br/>15 <b>there?</b><br/>16 A. Correct.</p> <p>17 <b>Q. So he comes in. And you tell</b><br/>18 <b>him -- is the man still there?</b><br/>19 A. Yes.</p> <p>20 <b>Q. What happens after that?</b><br/>21 A. I asked Rich if I can speak<br/>22 with him towards the back of the dining<br/>23 room. We sat down to hold the</p>                                                                     | <p>1 let him do what he wants, and it's just<br/>2 always been that way.</p> <p>3 Well, I then explained to<br/>4 Rich that I'm not Carl, and if that<br/>5 gentleman was to fall and hurt himself<br/>6 and how he feel about me racially, he<br/>7 would definitely come after me, was my<br/>8 feeling, as far as negligence on Cracker<br/>9 Barrel's portion. So I was actually<br/>10 trying to protect not only myself but<br/>11 Cracker Barrel from any litigation due to<br/>12 the fact that he could fall and hurt<br/>13 himself when he's not there on vendor<br/>14 business. He continued to talk. And I<br/>15 explained to Rich --</p> <p>16 <b>Q. When you say he?</b><br/>17 A. Rich.</p> <p>18 <b>Q. The other man has gone on out</b><br/>19 <b>the door?</b><br/>20 A. No. He didn't leave. He<br/>21 made his comment, and he went to go sit<br/>22 back down at the dining room table.</p> <p>23 <b>Q. He's gone away from y'all?</b></p>                                                                                                             |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 217</p> <p>1 A. Yes. Rich continued to<br/>2 explain how it's just Bill and he's been<br/>3 allowed to do this for so long and how<br/>4 they tolerated it because if there was a<br/>5 really bad thunderstorm, Cracker Barrel<br/>6 was on his list of being the first to get<br/>7 power back up. So they allowed him to do<br/>8 the things that he did because if we had<br/>9 a storm, instead of having to go rent<br/>10 refrigerated trucks because the cooler<br/>11 may get too hot or something like that,<br/>12 he would come to Cracker Barrel and see<br/>13 what he could do about getting power up<br/>14 first.</p> <p>15 <b>Q. What about the generator?</b><br/>16 A. There was no generator. We<br/>17 would have to go with trucks,<br/>18 refrigerated trucks, if that was an<br/>19 issue.</p> <p>20 <b>Q. All right. The coolers stay</b><br/>21 <b>cold, what is it, thirty-six hours or</b><br/>22 <b>something?</b><br/>23 A. It maintains a temperature</p>                                                                     | <p style="text-align: right;">Page 219</p> <p>1 before I did.</p> <p>2 <b>Q. Okay. So basically what</b><br/>3 <b>you're telling me -- and I want to know</b><br/>4 <b>this, but when you were talking about</b><br/>5 <b>there had been other incidents that were</b><br/>6 <b>racial in nature, these involved third</b><br/>7 <b>parties? You had not had anybody who</b><br/>8 <b>worked for you say anything racial?</b><br/>9 A. The comment that Tommy made<br/>10 about blacks and funerals and partying on<br/>11 the weekends.</p> <p>12 <b>Q. Right. I understand that</b><br/>13 <b>one, but I'm saying --</b><br/>14 A. And there was one other<br/>15 comment that Tommy made, and it was<br/>16 brought to my attention. Again, her<br/>17 first name is Linda. I just don't<br/>18 remember her last name. And that comment<br/>19 was no black man is going to tell him<br/>20 what to do. He was there first.</p> <p>21 <b>Q. I thought you said Bill said</b><br/>22 <b>that?</b><br/>23 A. No, no. Bill said no black</p> |
| <p style="text-align: right;">Page 218</p> <p>1 for so long. If there's a power failure,<br/>2 we just have to maintain the temperature<br/>3 and get them up before it reaches<br/>4 thirty-seven degrees, and if it does<br/>5 reach thirty-seven degrees, we have to<br/>6 get refrigerated trucks out immediately.</p> <p>7</p> <p>8 <b>Q. Okay. Anything else? You've</b><br/>9 <b>told me two things that related to Bill.</b><br/>10 <b>Anything else?</b><br/>11 A. There was also several older<br/>12 Caucasian men who were guests, such as<br/>13 Bill, but it was a circle of them. They<br/>14 knew each other, but Bill usually sat by<br/>15 himself, and then these guys sat in a<br/>16 circle by themselves, who also made<br/>17 racial remarks. And Linda, who is the<br/>18 cashier there, before I commented to the<br/>19 gentlemen, her father who is also an old<br/>20 Caucasian male commented to the gentlemen<br/>21 which did not lead me to have to comment<br/>22 to him, because I was going to ask him to<br/>23 leave. But he had already addressed them</p> | <p style="text-align: right;">Page 220</p> <p>1 should be in charge of all these whites.</p> <p>2 <b>Q. Well, you also said that Bill</b><br/>3 <b>said that second sentence?</b><br/>4 A. No. That was a comment that<br/>5 Linda made -- that Linda told me that<br/>6 Tommy made.</p> <p>7 <b>Q. Nothing that you heard but</b><br/>8 <b>that Linda said that Tommy had said</b><br/>9 <b>sometime previously?</b><br/>10 A. Yes.</p> <p>11 <b>Q. And when was that previously?</b><br/>12 A. I don't know when the comment<br/>13 was made because Linda also told me that<br/>14 she mentioned that to Rich Alexander as<br/>15 well.</p> <p>16 <b>Q. Now, Linda is the cashier</b><br/>17 <b>Linda or a different Linda?</b><br/>18 A. Cashier Linda.</p> <p>19 <b>Q. Okay. I just wanted to make</b><br/>20 <b>sure we know who they are. Anything</b><br/>21 <b>else?</b><br/>22 A. Not racially. Just<br/>23 behaviorally.</p>                                                                                                       |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 221</p> <p>1 Q. Okay. So this comment had<br/>2 happened in March, early March?<br/>3 A. Yes.<br/>4 Q. The evaluation occurs. And<br/>5 what I'm trying to get to is after you<br/>6 speak to -- I mean, this was not<br/>7 discussed at your evaluation. It was<br/>8 just performance issues and communication<br/>9 issues?<br/>10 A. No. Everything is discussed,<br/>11 because behaviors were an issue. So that<br/>12 was also an issue going towards trust and<br/>13 behaviors and credibility, because I<br/>14 questioned credibility when race is<br/>15 involved. And then you have someone who<br/>16 requests to be a general manager of this<br/>17 facility three times and was not allowed<br/>18 to be, who was put on a final<br/>19 documentation for falsifying company<br/>20 documents and his involvement of the<br/>21 prior general manager's dismissal, and<br/>22 then he requested to become the general<br/>23 manager again, and they turn him down,</p> | <p style="text-align: right;">Page 223</p> <p>1 what I'm marking as Exhibit 5. Take a<br/>2 look at that.<br/>3 (Whereupon, Defendant's<br/>4 Exhibit No. 5 was marked for<br/>5 identification and copy of same is<br/>6 attached hereto.)<br/>7 A. (Witness reviews document.)<br/>8 Okay.<br/>9 Q. I mean, I just want to be<br/>10 sure we're clear. The racially offensive<br/>11 comment is the funeral comment, correct?<br/>12 A. That was one of the comments<br/>13 made, yes.<br/>14 Q. Well, that's the one you<br/>15 filed the EEOC about, correct?<br/>16 A. Yes.<br/>17 Q. And you didn't file anything<br/>18 with the EEOC about any other -- like<br/>19 Bill or anything, these vendors or<br/>20 patrons, correct?<br/>21 A. Correct. They were not<br/>22 employees of Cracker Barrel.<br/>23 Q. That's what I'm getting to.</p>                                                                                                            |
| <p style="text-align: right;">Page 222</p> <p>1 and then I show up. So that was my<br/>2 discussion with him about credibility and<br/>3 frustrations and things of that nature,<br/>4 because it was very difficult, not only<br/>5 to deal with the racial issues, but also<br/>6 the behaviors.<br/>7 Q. But you say racial issues,<br/>8 and, you know, what concerns me about<br/>9 this, we're here because you filed a EEOC<br/>10 charge, right?<br/>11 A. Yes.<br/>12 Q. And in your EEOC charge<br/>13 you're very specific about what you're<br/>14 complaining about?<br/>15 A. Yes.<br/>16 Q. And it was the funeral<br/>17 comment?<br/>18 A. No. There was several things<br/>19 in my EEOC complaint. That was one of<br/>20 those.<br/>21 Q. All right. Well, let's look<br/>22 at it. I didn't want to go out of order,<br/>23 but I think we better. Let me show you</p>                                                                                                                                 | <p style="text-align: right;">Page 224</p> <p>1 We're in a lawsuit because you have said<br/>2 an employee of Cracker Barrel said<br/>3 something that you learned about that was<br/>4 offensive to you?<br/>5 A. That I heard part of and I<br/>6 learned the conclusion of the statement,<br/>7 yes.<br/>8 Q. Okay. And then the -- and<br/>9 then thereafter you were terminated, and<br/>10 you draw a --<br/>11 A. No, it wasn't thereafter.<br/>12 Q. When I say thereafter, I mean<br/>13 the comment was made in March, and you<br/>14 were terminated in September?<br/>15 A. That's correct.<br/>16 Q. Okay. And you, in your EEOC<br/>17 charge, state this comment was made. I<br/>18 received evaluations and a disciplinary<br/>19 action, and you were discharged, correct?<br/>20 A. Through that time frame, yes.<br/>21 Q. Okay. And so the only thing<br/>22 that you considered to be a racially<br/>23 offensive charge related to your</p> |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 225</p> <p>1 <b>employment that you filed about was the</b><br/> 2 <b>funeral comment, correct?</b><br/> 3 A. No, that wasn't the only<br/> 4 offensive one, but that was the only one<br/> 5 made by a Cracker Barrel employee.<br/> 6 <b>Q. Yeah. I was trying to be</b><br/> 7 <b>clear. The one that you filed, the one</b><br/> 8 <b>that you're complaining about related to</b><br/> 9 <b>your employment was the one by the</b><br/> 10 <b>Cracker Barrel employee related to the</b><br/> 11 <b>funeral?</b><br/> 12 A. No. I complained of all of<br/> 13 them, but that was the only one -- he was<br/> 14 the only one who was a Cracker Barrel<br/> 15 employee.<br/> 16 <b>Q. All right. The only one you</b><br/> 17 <b>filed a charge of discrimination about</b><br/> 18 <b>was the funeral comment?</b><br/> 19 A. No. I complained about all<br/> 20 of them, but he was the Cracker Barrel<br/> 21 employee that made the racial comment.<br/> 22 <b>Q. Did you complain to -- are</b><br/> 23 <b>you telling me that you complained to the</b></p> | <p style="text-align: right;">Page 227</p> <p>1 for. And these are comments made by Rich<br/> 2 Alexander.<br/> 3 <b>Q. What is it you wanted to</b><br/> 4 <b>happen?</b><br/> 5 A. Fairness.<br/> 6 <b>Q. What would that be in your</b><br/> 7 <b>mind?</b><br/> 8 A. That would have been the<br/> 9 investigation being conducted and the<br/> 10 processes and procedures being done<br/> 11 properly.<br/> 12 <b>Q. And if they were, you think</b><br/> 13 <b>everything has been done fair?</b><br/> 14 A. They weren't, but I would<br/> 15 think that things would have been more in<br/> 16 order than they have been.<br/> 17 <b>Q. What is the ultimate result</b><br/> 18 <b>that you were seeking from this</b><br/> 19 <b>investigation?</b><br/> 20 A. Fairness.<br/> 21 <b>Q. What would that be?</b><br/> 22 A. A proper investigation,<br/> 23 proper communication, and if it warranted</p> |
| <p style="text-align: right;">Page 226</p> <p>1 <b>EEOC about all of them?</b><br/> 2 A. No. I complained to human<br/> 3 resources and to Rich Alexander.<br/> 4 <b>Q. I'm just trying to get to</b><br/> 5 <b>what the lawsuit is about. You filed a</b><br/> 6 <b>complaint with the EEOC about the funeral</b><br/> 7 <b>comment, correct?</b><br/> 8 A. That was one of the<br/> 9 complaints.<br/> 10 <b>Q. The other complaint was that</b><br/> 11 <b>you felt like because you complained</b><br/> 12 <b>about that, you were terminated? Are</b><br/> 13 <b>those your two complaints?</b><br/> 14 A. No.<br/> 15 <b>Q. What are you suing Cracker</b><br/> 16 <b>Barrel for?</b><br/> 17 A. My complaint was the fact<br/> 18 that no actions were taken once the<br/> 19 allegations -- the complaint was made.<br/> 20 <b>Q. Right.</b><br/> 21 A. And then I was being told<br/> 22 things when I inquired into the<br/> 23 complaint, don't forget who you work</p>                                                                                                                         | <p style="text-align: right;">Page 228</p> <p>1 action, that action be taken.<br/> 2 <b>Q. All right. And do you -- are</b><br/> 3 <b>you saying those things did not happen?</b><br/> 4 A. Yes.<br/> 5 <b>Q. Was it investigated?</b><br/> 6 A. No.<br/> 7 <b>Q. Was Penny asked about it?</b><br/> 8 A. Months later.<br/> 9 <b>Q. Did Penny give a statement</b><br/> 10 <b>about it?</b><br/> 11 A. Yes.<br/> 12 <b>Q. All right. Was any</b><br/> 13 <b>discipline issued?</b><br/> 14 A. No.<br/> 15 <b>Q. Do you have any knowledge</b><br/> 16 <b>whatsoever as to whether or not Tommy was</b><br/> 17 <b>counseled about it, spoken to about it,</b><br/> 18 <b>or anything?</b><br/> 19 A. I know that procedures were<br/> 20 not followed because I was not<br/> 21 addressed. So it could not have been<br/> 22 done properly because I was not<br/> 23 addressed.</p>                              |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 229</p> <p>1 <b>Q. Well, according to you today,</b><br/> 2 <b>which is the first time I've seen this in</b><br/> 3 <b>anything that you've said to anybody, you</b><br/> 4 <b>heard two words on a conversation?</b><br/> 5 A. I heard two derogatory words,<br/> 6 but yes.<br/> 7 <b>Q. "Only blacks" are the</b><br/> 8 <b>derogatory words?</b><br/> 9 A. Yes, because it singled out<br/> 10 blacks. What's not derogatory about<br/> 11 this?<br/> 12 <b>Q. All right. Those two words</b><br/> 13 <b>were derogatory to you?</b><br/> 14 A. Yes, based on his behaviors<br/> 15 and earlier comments.<br/> 16 <b>Q. Okay. Why didn't you call</b><br/> 17 <b>immediately and make a complaint?</b><br/> 18 A. I wasn't aware of the<br/> 19 completion of those words.<br/> 20 <b>Q. Well, why would you need them</b><br/> 21 <b>according to what you've just said?</b><br/> 22 A. Because I just got two<br/> 23 words. And as Penny walked in that</p> | <p style="text-align: right;">Page 231</p> <p>1 <b>Q. You didn't call the home</b><br/> 2 <b>office?</b><br/> 3 A. No.<br/> 4 <b>Q. Then you got to work, and you</b><br/> 5 <b>spoke to Penny?</b><br/> 6 A. Yes.<br/> 7 <b>Q. And then you called and made</b><br/> 8 <b>an open door investigation?</b><br/> 9 A. Yes.<br/> 10 <b>Q. Where they write down what</b><br/> 11 <b>you said?</b><br/> 12 A. I'm sorry?<br/> 13 <b>Q. Where they write down what</b><br/> 14 <b>you called to say to them, correct?</b><br/> 15 A. I don't know what happens<br/> 16 when you call in.<br/> 17 MS. BUSBY: Let's take a<br/> 18 break. I'm going to get that document.<br/> 19 (Whereupon, a brief recess<br/> 20 was taken.).<br/> 21 <b>Q. Okay. Mr. Rodgers, I've</b><br/> 22 <b>found it. When you called the hot line,</b><br/> 23 <b>you know, they take an account of what</b></p>                                                                                                                                                                                                                                            |
| <p style="text-align: right;">Page 230</p> <p>1 morning and said what was said, I called<br/> 2 in.<br/> 3 <b>Q. No. You weren't at work.</b><br/> 4 <b>You were on the phone two and a half days</b><br/> 5 <b>earlier when you claim you heard those</b><br/> 6 <b>two derogatory words?</b><br/> 7 A. That's correct.<br/> 8 <b>Q. Why didn't you call</b><br/> 9 <b>immediately and make a complaint if they</b><br/> 10 <b>were derogatory to you?</b><br/> 11 A. Ma'am, I was at home ill, and<br/> 12 I had just got word of a death in the<br/> 13 family.<br/> 14 <b>Q. You were ill the next two</b><br/> 15 <b>days?</b><br/> 16 A. I was taking medications,<br/> 17 yes.<br/> 18 <b>Q. Okay. But you were at home?</b><br/> 19 A. Yes.<br/> 20 <b>Q. And you didn't call?</b><br/> 21 A. No, I didn't speak with<br/> 22 Tommy. I did leave word for Tommy, but I<br/> 23 did not speak with Tommy.</p>                                                                                  | <p style="text-align: right;">Page 232</p> <p>1 <b>you told them, and this is what it says:</b><br/> 2 <b>That you called regarding a potential</b><br/> 3 <b>employment incident seeking advice as to</b><br/> 4 <b>how it proceed. That's what you told me;</b><br/> 5 <b>is that right?</b><br/> 6 A. Yes.<br/> 7 <b>Q. Okay. And that Penny</b><br/> 8 <b>Schmidt, shift leader, is what this says,</b><br/> 9 <b>is that -- was she a shift leader?</b><br/> 10 A. Yes.<br/> 11 <b>Q. Had come to you to let you</b><br/> 12 <b>know about a comment that Tommy</b><br/> 13 <b>Patterson, SAM --</b><br/> 14 A. Senior associate manager.<br/> 15 <b>Q. -- took a call -- this says</b><br/> 16 <b>from an hourly stating the employee would</b><br/> 17 <b>not be in work due to a funeral. When</b><br/> 18 <b>hanging up, Patterson made an</b><br/> 19 <b>inappropriate comment stating that he</b><br/> 20 <b>thought that black people were only</b><br/> 21 <b>buried during the week, not on a</b><br/> 22 <b>weekend. This comment offended Schmidt</b><br/> 23 <b>as she is married to an African-American</b></p> |

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## FREEDOM COURT REPORTING

| Page 233                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 235                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <p>1 man.</p> <p>2 Is that what you reported to</p> <p>3 them when you called?</p> <p>4 A. No. I don't know what their</p> <p>5 -- that's a part of it, but I don't know</p> <p>6 what they typed up.</p> <p>7 Q. Is Penny Schmidt married to</p> <p>8 an African-American man?</p> <p>9 A. No.</p> <p>10 Q. Did you say that to them?</p> <p>11 A. That she's married to an</p> <p>12 African-American male?</p> <p>13 Q. Yes, sir.</p> <p>14 A. No.</p> <p>15 Q. All right. So what you say</p> <p>16 about this is that you called, told them</p> <p>17 that you needed some advice because Penny</p> <p>18 Schmidt had come to you about a comment</p> <p>19 that she heard Tommy Patterson say. That</p> <p>20 is all correct?</p> <p>21 A. No.</p> <p>22 Q. That's incorrect?</p> <p>23 A. That's incorrect.</p>                                                     | <p>1 A. I did inform her of that,</p> <p>2 yes.</p> <p>3 Q. And that once Penny completed</p> <p>4 the sentence for you, you understood what</p> <p>5 it was he was -- the first two words were</p> <p>6 tied to, you also took offense to that?</p> <p>7 A. No, I was offended when I</p> <p>8 heard the comments, and I tried calling</p> <p>9 back.</p> <p>10 Q. All right. So you told her</p> <p>11 you were offended when you heard the</p> <p>12 first two comments?</p> <p>13 A. She did not go into detail</p> <p>14 and ask me whether it did or did not</p> <p>15 offend me.</p> <p>16 Q. All right. And did she --</p> <p>17 did you speak to a person named Kay</p> <p>18 Barnes?</p> <p>19 A. No.</p> <p>20 Q. You never spoke to Kay</p> <p>21 Barnes?</p> <p>22 A. No.</p> <p>23 Q. All right. Did Kay Barnes</p>                                                                                 |
| Page 234                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 236                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>1 Q. All right. So all we can</p> <p>2 gather from this is that you called,</p> <p>3 that's true?</p> <p>4 A. Yes.</p> <p>5 Q. That you were seeking advice</p> <p>6 about what to do, that's true?</p> <p>7 A. Yes.</p> <p>8 Q. That Penny Schmidt had come</p> <p>9 to you that morning, that's true?</p> <p>10 A. Yes.</p> <p>11 Q. Talking about the comment</p> <p>12 Tommy Patterson made about the funeral,</p> <p>13 that's true?</p> <p>14 A. Part of it, yes.</p> <p>15 Q. Okay. So all of that is</p> <p>16 consistent with what you're testifying</p> <p>17 to, and what you're saying is that</p> <p>18 there's additional things that are not in</p> <p>19 what I've just read to you?</p> <p>20 A. That's correct.</p> <p>21 Q. And the additional things are</p> <p>22 that you heard the first two words as he</p> <p>23 was hanging up the phone?</p> | <p>1 leave you a voicemail asking you to</p> <p>2 obtain statements?</p> <p>3 A. No. I was told by Vonn Barr</p> <p>4 that she will get with -- Kay Barnes is</p> <p>5 actually Vonn Barr's boss, and Rich</p> <p>6 Alexander and -- for me to do nothing,</p> <p>7 not to even initiate the open door</p> <p>8 policy.</p> <p>9 Q. So did she initially -- let</p> <p>10 me just ask you if you remember this. I</p> <p>11 understand they may have changed what</p> <p>12 they wanted you to do according to you</p> <p>13 based on you being involved. But did you</p> <p>14 ever receive a voicemail asking you to</p> <p>15 obtain statements?</p> <p>16 A. No.</p> <p>17 Q. All right. So I guess the</p> <p>18 next question is: Did you get any</p> <p>19 statements?</p> <p>20 A. No.</p> <p>21 Q. So you never got any</p> <p>22 statements from anybody and sent them to</p> <p>23 Barnes or Barr?</p> |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 237</p> <p>1 A. No.</p> <p>2 <b>Q. Well, the next thing I have</b></p> <p>3 <b>is that you call and say could you have</b></p> <p>4 <b>Kelly call you back so she could tell you</b></p> <p>5 <b>how to proceed, and this is in April?</b></p> <p>6 A. No. I never asked her to</p> <p>7 tell me how to proceed, because I was</p> <p>8 told to remove myself.</p> <p>9 <b>Q. So basically, if I understand</b></p> <p>10 <b>this scenario correctly, based on you</b></p> <p>11 <b>calling -- you called on March the 4th?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. According to you, Ms. Barr</b></p> <p>14 <b>told you you're involved so you can't</b></p> <p>15 <b>proceed with any investigation?</b></p> <p>16 A. That's correct.</p> <p>17 <b>Q. All right. Your expectation</b></p> <p>18 <b>was that there would be an investigation</b></p> <p>19 <b>and that you would be reported the</b></p> <p>20 <b>result?</b></p> <p>21 A. No. Ms. Barr stated that she</p> <p>22 would do the open ticket and she would</p> <p>23 forward it on to --</p>                               | <p style="text-align: right;">Page 239</p> <p>1 to remove myself because of the fact that</p> <p>2 I would be questioned.</p> <p>3 <b>Q. Okay. Well, did you ever</b></p> <p>4 <b>speak to Rich about this?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. Okay. When did you speak to</b></p> <p>7 <b>Rich about this?</b></p> <p>8 A. About two weeks afterwards.</p> <p>9 <b>Q. Okay. And what did y'all</b></p> <p>10 <b>discuss?</b></p> <p>11 A. I just asked the status, and</p> <p>12 he responded, Don't forget who you work</p> <p>13 for.</p> <p>14 <b>Q. Well, when you asked the</b></p> <p>15 <b>status, what was your question?</b></p> <p>16 A. I just asked the status of</p> <p>17 the investigation, because I knew that he</p> <p>18 had to talk to me. We have ten days to</p> <p>19 either do fact finding or requesting an</p> <p>20 extension, and he hadn't come to speak</p> <p>21 with me. So I just asked him what was</p> <p>22 the status.</p> <p>23 <b>Q. Well, and his response was</b></p> |
| <p style="text-align: right;">Page 238</p> <p>1 <b>Q. Ms. Barnes?</b></p> <p>2 A. Ms. Barnes, and that she</p> <p>3 would have to get in contact with Rich</p> <p>4 personally.</p> <p>5 <b>Q. That Ms. Barnes would?</b></p> <p>6 A. Yes, to do the open door.</p> <p>7 <b>Q. Okay. But I'm just trying to</b></p> <p>8 <b>get down to the bottom of this as far as</b></p> <p>9 <b>making sure I understand your EEOC</b></p> <p>10 <b>charge. You feel that what you were</b></p> <p>11 <b>complaining about is that they should</b></p> <p>12 <b>have done the investigation fairly and</b></p> <p>13 <b>reported the result to you?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. Okay. Now, to do the</b></p> <p>16 <b>investigation you would have to ask Penny</b></p> <p>17 <b>what happened and Tommy what happened,</b></p> <p>18 <b>and your complaint is they should have</b></p> <p>19 <b>also asked you?</b></p> <p>20 A. No. They would have to ask</p> <p>21 me because of the fact that when I called</p> <p>22 to do -- to seek their advice, I informed</p> <p>23 them that it involved me, and I was told</p> | <p style="text-align: right;">Page 240</p> <p>1 <b>don't forget who you work for?</b></p> <p>2 A. Yes.</p> <p>3 <b>Q. I mean, so you say what's the</b></p> <p>4 <b>status of the investigation of Tommy?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. And his statement is don't</b></p> <p>7 <b>forget who you work for?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. How is that responsive to</b></p> <p>10 <b>your question? I mean, what kind of --</b></p> <p>11 <b>where were y'all?</b></p> <p>12 A. We were at Cracker Barrel,</p> <p>13 and that was his response.</p> <p>14 <b>Q. And what did you say after</b></p> <p>15 <b>that?</b></p> <p>16 A. When he said don't forget who</p> <p>17 you work for, I backed off.</p> <p>18 <b>Q. You didn't say anything?</b></p> <p>19 A. To Rich, no.</p> <p>20 <b>Q. All right. What did you do</b></p> <p>21 <b>after that?</b></p> <p>22 A. I waited to -- wait for him</p> <p>23 to come to me and ask me about it, and I</p>                                            |

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| <p style="text-align: right;">Page 241</p> <p>1 just waited at that point because I felt</p> <p>2 that my asking about it was going to</p> <p>3 cause trouble for me.</p> <p>4 <b>Q. All right. Well, sometime</b></p> <p>5 <b>during the midst of this you're gone to</b></p> <p>6 <b>the funeral?</b></p> <p>7 <b>A. Yes.</b></p> <p>8 <b>Q. Can you recollect when the</b></p> <p>9 <b>funeral was?</b></p> <p>10 <b>A. I don't know what day, maybe</b></p> <p>11 <b>a Thursday. It's been a while.</b></p> <p>12 <b>Q. It was on a Thursday?</b></p> <p>13 <b>A. I don't know exactly which</b></p> <p>14 <b>day.</b></p> <p>15 <b>Q. I looked this up so we would</b></p> <p>16 <b>know what dates we were talking about.</b></p> <p>17 <b>March the 3rd is a Thursday.</b></p> <p>18 <b>A. Again, I don't know which</b></p> <p>19 <b>day.</b></p> <p>20 <b>Q. Well, I mean, I'm just trying</b></p> <p>21 <b>to get us in the general ballpark here</b></p> <p>22 <b>about when you came back to work and made</b></p> <p>23 <b>the call. All right. You made the call,</b></p>                                                                                                                                                            | <p style="text-align: right;">Page 243</p> <p>1 <b>the day you complained and called for</b></p> <p>2 <b>advice to the home office was according</b></p> <p>3 <b>to you in your EEOC charge what day?</b></p> <p>4 <b>A. On the EEOC charge it has</b></p> <p>5 <b>March the 3rd.</b></p> <p>6 <b>Q. So all you have on that day</b></p> <p>7 <b>is what day you say the call was made? I</b></p> <p>8 <b>gave y'all my copy. That's why I'm</b></p> <p>9 <b>asking these questions. I don't have it</b></p> <p>10 <b>in front of me.</b></p> <p>11 <b>A. Ask the question again.</b></p> <p>12 <b>Q. Could I see that? Okay. In</b></p> <p>13 <b>your Exhibit 5, your EEOC charge, you</b></p> <p>14 <b>state that on March the 3rd a derogatory</b></p> <p>15 <b>statement was made. And what I'm asking</b></p> <p>16 <b>you is: Was that the day the statement</b></p> <p>17 <b>was made or is that the day you called to</b></p> <p>18 <b>make the complaint or do you remember?</b></p> <p>19 <b>A. No, ma'am, I don't remember</b></p> <p>20 <b>exactly.</b></p> <p>21 <b>Q. Okay. So the best way to</b></p> <p>22 <b>figure this out is I guess if we knew</b></p> <p>23 <b>when the woman died, we would know</b></p> |
| <p style="text-align: right;">Page 242</p> <p>1 <b>according to you -- look on that EEOC.</b></p> <p>2 <b>What exhibit is that?</b></p> <p>3 <b>A. 5.</b></p> <p>4 <b>Q. When did you tell them you</b></p> <p>5 <b>called, March the 3rd or the 4th?</b></p> <p>6 <b>A. This just says the comment</b></p> <p>7 <b>was made on the 3rd.</b></p> <p>8 <b>Q. All right. So if the comment</b></p> <p>9 <b>was made on March the 3rd, that was on</b></p> <p>10 <b>Thursday, of 2005. I'm just trying to</b></p> <p>11 <b>give you the dates. And according to</b></p> <p>12 <b>you, you were scheduled off the two days</b></p> <p>13 <b>after that day anyway, which would have</b></p> <p>14 <b>been you were scheduled off Friday and</b></p> <p>15 <b>Saturday. So you would have returned to</b></p> <p>16 <b>work on Sunday according to what you told</b></p> <p>17 <b>me earlier; is that correct?</b></p> <p>18 <b>A. Again, I'm not exactly sure.</b></p> <p>19 <b>Q. I think the comment,</b></p> <p>20 <b>according to your previous testimony --</b></p> <p>21 <b>and I don't know; I'm just going by what</b></p> <p>22 <b>you've told me -- is that the comment was</b></p> <p>23 <b>not made on the day you complained, and</b></p> | <p style="text-align: right;">Page 244</p> <p>1 <b>that -- you found out the day of or the</b></p> <p>2 <b>day after, I'm presuming. Would that be</b></p> <p>3 <b>right, the day of her death or the day</b></p> <p>4 <b>after?</b></p> <p>5 <b>A. Yes.</b></p> <p>6 <b>Q. Okay. So she's in Aikens?</b></p> <p>7 <b>A. And the news came</b></p> <p>8 <b>secondhand. I was living in Alabama.</b></p> <p>9 <b>Q. Right. But, I mean, she may</b></p> <p>10 <b>have passed the day before or do you</b></p> <p>11 <b>think you found out the day she passed?</b></p> <p>12 <b>A. I'm not sure. I was just</b></p> <p>13 <b>told that she had passed away, and that's</b></p> <p>14 <b>when they got in contact with me.</b></p> <p>15 <b>Q. And that's when they told you</b></p> <p>16 <b>they are making arrangements for the</b></p> <p>17 <b>funeral?</b></p> <p>18 <b>A. Yes.</b></p> <p>19 <b>Q. Okay. So if, in fact, you</b></p> <p>20 <b>were off the two days after, how long did</b></p> <p>21 <b>you work before you went to the funeral?</b></p> <p>22 <b>A. I don't recall.</b></p> <p>23 <b>Q. I mean, a week?</b></p>                                                                                          |

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| <p style="text-align: right;">Page 245</p> <p>1 A. I don't recall.</p> <p>2 Q. All right. How many days</p> <p>3 were you off for the funeral?</p> <p>4 A. I don't recall if it was in</p> <p>5 conjunction with my days off or if it was</p> <p>6 an adjustment in the schedule for that.</p> <p>7 Q. All right. But to the best</p> <p>8 of your recollection as you sit here</p> <p>9 today, you call in. You've been off</p> <p>10 sick. You tell them that there's been a</p> <p>11 death, and you stay off two days or two</p> <p>12 and a half days, and you come back, and</p> <p>13 then you work for a period, and then you</p> <p>14 leave for the funeral?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. All right. So that</p> <p>17 comment is made. You call the help</p> <p>18 line. You say Penny Schmidt has come to</p> <p>19 you and you need some advice about how to</p> <p>20 handle it, and it's also offensive to you</p> <p>21 is what your recollection is?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. They tell you that</p> | <p style="text-align: right;">Page 247</p> <p>1 came to get the statement from her?</p> <p>2 A. No.</p> <p>3 Q. Did you ever talk to Penny</p> <p>4 about any statement that she gave?</p> <p>5 A. No.</p> <p>6 Q. All right. Did Tommy</p> <p>7 Patterson ever say anything to you about</p> <p>8 them taking a statement from him?</p> <p>9 A. No.</p> <p>10 Q. Did Tommy --</p> <p>11 A. I didn't talk to Tommy at</p> <p>12 all.</p> <p>13 Q. You worked with him for</p> <p>14 several months after this?</p> <p>15 A. About the investigation.</p> <p>16 Q. Okay. So you never heard</p> <p>17 from Tommy if they asked him about it?</p> <p>18 A. Correct.</p> <p>19 Q. You never talked to Penny</p> <p>20 about whether they asked her about it?</p> <p>21 A. Correct.</p> <p>22 Q. You don't know what happened</p> <p>23 between Penny and Tommy?</p>                                                                |
| <p style="text-align: right;">Page 246</p> <p>1 since you're involved, we're going to</p> <p>2 have to get somebody to do the</p> <p>3 investigation, and we'll tell Rich</p> <p>4 Alexander?</p> <p>5 A. No. They tell me that Rich</p> <p>6 Alexander has to do the investigation and</p> <p>7 that I'm to remove myself completely and</p> <p>8 that she was notifying Rich. She was</p> <p>9 doing an open ticket and she would notify</p> <p>10 Rich at that time.</p> <p>11 Q. All right. So she notifies</p> <p>12 Rich. Two weeks later you ask him about</p> <p>13 it. He tells you to remember who you</p> <p>14 work for. You don't say anything else.</p> <p>15 And then what's the next thing that</p> <p>16 happened?</p> <p>17 A. That's too general. I can't</p> <p>18 answer that. That's too general.</p> <p>19 Q. Well, I mean, did you know</p> <p>20 anything else about the investigation</p> <p>21 from that point forward?</p> <p>22 A. During that time frame, no.</p> <p>23 Q. Did Penny tell you when they</p> | <p style="text-align: right;">Page 248</p> <p>1 A. Correct.</p> <p>2 Q. And the next thing is is that</p> <p>3 you -- do you ever ask Rich about it</p> <p>4 again?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. When did that occur?</p> <p>7 A. I asked him again in April,</p> <p>8 towards the end of the month. And he</p> <p>9 told me it was his responsibility and he</p> <p>10 left it at that.</p> <p>11 Q. Meaning it's his</p> <p>12 responsibility to investigate and make a</p> <p>13 recommendation or a decision?</p> <p>14 A. I just took his answer as</p> <p>15 it's his responsibility.</p> <p>16 Q. Okay. Well, and you don't</p> <p>17 disapprove of that statement, correct?</p> <p>18 A. Well, they told me it was his</p> <p>19 responsibility.</p> <p>20 Q. Right. Okay. So what's the</p> <p>21 next thing that happened?</p> <p>22 A. Again, that's very general.</p> <p>23 Q. Well, as it relates -- I'm</p> |

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| <p style="text-align: right;">Page 249</p> <p>1 not trying to be general. I'm trying to<br/> 2 relate to this incident unless you have<br/> 3 something different or more you want to<br/> 4 add about it.<br/> 5 A. When you say what's the next<br/> 6 thing that happened --<br/> 7 Q. You go on about your business<br/> 8 and, you know, y'all work or have<br/> 9 whatever issues work related that you<br/> 10 have, I take it?<br/> 11 A. When the comment was made, I<br/> 12 just went back to work before.<br/> 13 Q. You have your evaluation.<br/> 14 You submit an action plan. You proceed<br/> 15 to work with this management team and the<br/> 16 four or five of y'all agree or disagree,<br/> 17 or agree to disagree, but you proceed<br/> 18 about your work as you take it?<br/> 19 A. I proceeded about my duties,<br/> 20 yes.<br/> 21 Q. And as far as you know<br/> 22 everybody else proceeds about theirs?<br/> 23 A. Yes.</p> | <p style="text-align: right;">Page 251</p> <p>1 and Ron, and they informed me at that<br/> 2 time that there was an opening in<br/> 3 Montgomery, and they just felt that in<br/> 4 best for my career that I take the<br/> 5 Montgomery store.<br/> 6 Q. Well, tell me about that<br/> 7 conversation.<br/> 8 A. That was the conversation.<br/> 9 The conversation lasted no more than ten,<br/> 10 twelve minutes.<br/> 11 Q. Well, best for your career in<br/> 12 what regard?<br/> 13 A. I don't know.<br/> 14 Q. Did you ask any questions?<br/> 15 A. At that point, no.<br/> 16 Q. Did you ever ask any<br/> 17 questions about it?<br/> 18 A. After I was told don't forget<br/> 19 who you work for, it was my<br/> 20 responsibility, I didn't ask any more<br/> 21 questions after that.<br/> 22 Q. Well, you agreed to the<br/> 23 transfer?</p>                            |
| <p style="text-align: right;">Page 250</p> <p>1 Q. And you don't have any idea<br/> 2 what kind of investigation is going on<br/> 3 because you've been told it's my<br/> 4 responsibility by Rich?<br/> 5 A. And because Vonn Barr said I<br/> 6 was to back out of it.<br/> 7 Q. And because of that --<br/> 8 A. Yes.<br/> 9 Q. So in May of 2005 or<br/> 10 thereabouts, there is an opening at the<br/> 11 Montgomery store, I take it?<br/> 12 A. June.<br/> 13 Q. June?<br/> 14 A. Yes.<br/> 15 Q. There's an opening at the<br/> 16 Montgomery store?<br/> 17 A. Yes.<br/> 18 Q. You request to be transferred<br/> 19 to that store; is that correct?<br/> 20 A. No.<br/> 21 Q. All right. What happened<br/> 22 then?<br/> 23 A. I was asked to meet with Rich</p>                                                                                                                                                                                | <p style="text-align: right;">Page 252</p> <p>1 A. Yes.<br/> 2 Q. Okay. When did you start in<br/> 3 Montgomery?<br/> 4 A. June, the first week of June.<br/> 5 Q. All right. How did that go?<br/> 6 A. It was not a smooth<br/> 7 transaction.<br/> 8 Q. Okay. In what manner?<br/> 9 A. Well, when there's a new unit<br/> 10 -- it was a brand new unit, and the<br/> 11 general manager prior was termed, which<br/> 12 means the current general manager has no<br/> 13 hands-on with the management or the<br/> 14 personnel being hired and the<br/> 15 coordination of training.<br/> 16 Q. Were there assistant managers<br/> 17 there when you started?<br/> 18 A. Yes.<br/> 19 Q. All right. Who were they?<br/> 20 A. Ralph White (sic). Tony, I<br/> 21 don't know his last name. Carlos<br/> 22 Browning. Ashley Moore. And Brian. I<br/> 23 don't know his last name.</p> |

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| <p style="text-align: right;">Page 253</p> <p>1 <b>Q. Okay. How did you get along</b><br/> 2 <b>with these managers?</b><br/> 3 A. Personally they were okay.<br/> 4 Professionally, that was not the setting<br/> 5 for them.<br/> 6 <b>Q. What do you mean by that?</b><br/> 7 A. It was a new restaurant,<br/> 8 brand new unit, and everyone in it had no<br/> 9 experience of Cracker Barrel culture<br/> 10 whatsoever, and all except for Tony were<br/> 11 on final written warning for behavior<br/> 12 issues. So it's almost like taking the<br/> 13 bad apple and putting it in the bunch of<br/> 14 good apples.<br/> 15 <b>Q. Well, that would mean you</b><br/> 16 <b>were the bad apple and they were the</b><br/> 17 <b>bunch of good apples?</b><br/> 18 A. No.<br/> 19 <b>Q. So you meant it the reverse,</b><br/> 20 <b>I think?</b><br/> 21 A. No, ma'am.<br/> 22 <b>Q. Okay. Then I don't</b><br/> 23 <b>understand what you mean.</b></p>                                                                                           | <p style="text-align: right;">Page 255</p> <p>1 A. Brand new employees. It was<br/> 2 a brand new store.<br/> 3 <b>Q. All right. So you're saying</b><br/> 4 <b>all of the hourly employees?</b><br/> 5 A. Yes.<br/> 6 <b>Q. Had no idea what to do?</b><br/> 7 A. That's correct. It was a<br/> 8 brand new restaurant.<br/> 9 <b>Q. How long had it been open?</b><br/> 10 A. It hadn't.<br/> 11 <b>Q. It hadn't even opened?</b><br/> 12 A. No.<br/> 13 <b>Q. When did it open?</b><br/> 14 A. The first week of June. I<br/> 15 went down like a Thursday. I opened that<br/> 16 Friday.<br/> 17 <b>Q. All right. Well, so nobody</b><br/> 18 <b>had been there when it was opening to</b><br/> 19 <b>screw anything up?</b><br/> 20 A. No. That was the training<br/> 21 portion of it. We started training then.<br/> 22 <b>Q. All right. You've got hourly</b><br/> 23 <b>employees?</b></p>                                                    |
| <p style="text-align: right;">Page 254</p> <p>1 A. By there being two hundred --<br/> 2 a hundred and fifty to two hundred<br/> 3 employees there who do not understand the<br/> 4 culture, who do not understand how<br/> 5 Cracker Barrel works, who has to be led<br/> 6 by this management team, the managers<br/> 7 that were transferred in were managers<br/> 8 that were transferred in on final written<br/> 9 warnings for behavior issues. I was not<br/> 10 on the final written warning for<br/> 11 anything. They were on warnings for<br/> 12 behavior issues. That demonstrates that<br/> 13 they are not going to take this person<br/> 14 who they are supposed to be mold into<br/> 15 this culture and teach them culture and<br/> 16 develop and train them the right way,<br/> 17 because they are too new.<br/> 18 <b>Q. Well, I am completely</b><br/> 19 <b>confused here.</b><br/> 20 A. Okay.<br/> 21 <b>Q. The two hundred and fifty</b><br/> 22 <b>people you are talking about, who are</b><br/> 23 <b>those people?</b></p> | <p style="text-align: right;">Page 256</p> <p>1 A. Yes.<br/> 2 <b>Q. Who have been trained by</b><br/> 3 <b>somebody whether you think it's good or</b><br/> 4 <b>not?</b><br/> 5 A. They weren't -- the training<br/> 6 was not complete.<br/> 7 <b>Q. All right. So they are in</b><br/> 8 <b>the process of being trained?</b><br/> 9 A. Hired and trained, yes.<br/> 10 <b>Q. So when you open a new store,</b><br/> 11 <b>I take it that you bring experienced</b><br/> 12 <b>managers from other locations?</b><br/> 13 A. That's the concept, yes.<br/> 14 <b>Q. Okay. You come in as the</b><br/> 15 <b>general manager?</b><br/> 16 A. Yes.<br/> 17 <b>Q. But you say the previous</b><br/> 18 <b>general manager has been terminated?</b><br/> 19 A. That's correct.<br/> 20 <b>Q. Well, how had there been a</b><br/> 21 <b>previous general manager if the store had</b><br/> 22 <b>not opened?</b><br/> 23 A. Because he would be the</p> |

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| <p style="text-align: right;">Page 257</p> <p>1 organization of getting it open.<br/> 2 <b>Q. And how long are you in that</b><br/> 3 <b>position?</b><br/> 4 A. I was there from June to<br/> 5 September.<br/> 6 <b>Q. Not you. I mean the person</b><br/> 7 <b>who is opening a store?</b><br/> 8 A. Well, they start off with<br/> 9 several weeks just gathering the bases to<br/> 10 get open and go over the number of hires<br/> 11 and thing. So it just depends on how<br/> 12 long. Sometimes four weeks. Sometimes<br/> 13 six weeks. And then they coordinate<br/> 14 training and things of that nature before<br/> 15 the store itself is physically scheduled<br/> 16 to go live.<br/> 17 <b>Q. So apparently they had</b><br/> 18 <b>according to your recollection appointed</b><br/> 19 <b>somebody as a general manager who had</b><br/> 20 <b>been there six to eight weeks and he is</b><br/> 21 <b>let go?</b><br/> 22 A. Yes.<br/> 23 <b>Q. Who is that person? Do you</b></p> | <p style="text-align: right;">Page 259</p> <p>1 <b>Q. No?</b><br/> 2 A. No. They were selected prior<br/> 3 to me being there, and with their history<br/> 4 of disciplinary actions and being on the<br/> 5 final written warning, they never would<br/> 6 have been accepted to do a new store<br/> 7 opening.<br/> 8 <b>Q. Tell me who was on final</b><br/> 9 <b>written warning.</b><br/> 10 A. Brian.<br/> 11 <b>Q. What was --</b><br/> 12 A. Ashley.<br/> 13 <b>Q. What was he on final --</b><br/> 14 A. I was just told by Rich that<br/> 15 they were on final written warning.<br/> 16 <b>Q. I mean, do you know this of</b><br/> 17 <b>your own accord? Did you review their</b><br/> 18 <b>personnel files?</b><br/> 19 A. Well, I was a general manager<br/> 20 in Montgomery when risk management -- and<br/> 21 I'm not sure of his name -- came to<br/> 22 complete the investigation.<br/> 23 <b>Q. For who?</b></p>                                                                                            |
| <p style="text-align: right;">Page 258</p> <p>1 <b>recollect?</b><br/> 2 A. His name is Steve. I don't<br/> 3 know his last name.<br/> 4 <b>Q. Did you ever meet him?</b><br/> 5 A. No.<br/> 6 <b>Q. Okay. So you come in, and</b><br/> 7 <b>there are associate managers and a senior</b><br/> 8 <b>associate manager there?</b><br/> 9 A. Yes.<br/> 10 <b>Q. And they've been in other</b><br/> 11 <b>Cracker Barrel locations for varying</b><br/> 12 <b>periods of time?</b><br/> 13 A. Three of the people had six<br/> 14 months experience from management<br/> 15 training to the brand new store. One had<br/> 16 eight months, and I think the other one<br/> 17 was right at two years if I'm not<br/> 18 mistaken.<br/> 19 <b>Q. Okay. So on the one hand</b><br/> 20 <b>you've got an opportunity to train and</b><br/> 21 <b>mold these people to behave the way that</b><br/> 22 <b>you want them to behave?</b><br/> 23 A. No.</p>                                                     | <p style="text-align: right;">Page 260</p> <p>1 A. Brian and Carlos. Rich<br/> 2 informed me that Ashley was on final<br/> 3 written warning maybe two or three days<br/> 4 prior to me getting there because she was<br/> 5 involved in the incident with the GM that<br/> 6 was termed before I got there.<br/> 7 <b>Q. Are these the people's</b><br/> 8 <b>counseling things that you had?</b><br/> 9 A. You would have to -- I don't<br/> 10 know. You would have to show it to me.<br/> 11 <b>Q. Well, you know, the ones that</b><br/> 12 <b>you had that you claimed were in the</b><br/> 13 <b>briefcase that you were holding for Rich</b><br/> 14 <b>for those people?</b><br/> 15 MS. YORK: I'm going to<br/> 16 object. That's not what his testimony<br/> 17 was.<br/> 18 MS. BUSBY: The record will<br/> 19 show what his testimony was.<br/> 20 MS. YORK: That's true. But<br/> 21 that's not what it was.<br/> 22 <b>Q. Well, maybe we better clear</b><br/> 23 <b>that up then. Did you not tell me that</b></p> |

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| <p style="text-align: right;">Page 261</p> <p>1 you had employee disciplines for people<br/>2 in the locked briefcase that you were<br/>3 holding for Rich to pick up?<br/>4 A. I did have counsels, but I<br/>5 did not tell you I had those specific<br/>6 counsels you're speaking of.<br/>7 Q. I didn't tell you anything<br/>8 specific. We're about to tell you who<br/>9 they are. Final written counseling. Oh,<br/>10 that's for you, Dwight Rodgers. Ralph<br/>11 Whiting. So Rich had told you that Ralph<br/>12 Whiting was on a written warning; is that<br/>13 right?<br/>14 A. No.<br/>15 Q. No?<br/>16 A. I said Brian Thompson,<br/>17 Ashley, and Carlos.<br/>18 Q. Who is Ralph Whiting?<br/>19 A. He was an associate that was<br/>20 transferred in.<br/>21 Q. Did you give him a written<br/>22 warning?<br/>23 A. Yes.</p>                             | <p style="text-align: right;">Page 263</p> <p>1 Q. Who was it?<br/>2 A. Her name is Monique. I don't<br/>3 know her last name.<br/>4 Q. Did she give you the<br/>5 briefcase or did Rich give you the<br/>6 briefcase?<br/>7 A. I've testified that Rich had<br/>8 given me the briefcase.<br/>9 Q. Would she have seen it?<br/>10 A. I can't say whether she would<br/>11 or would not.<br/>12 Q. So anything that you had you<br/>13 would have had to have had in that<br/>14 briefcase before September the 3rd?<br/>15 A. Yes.<br/>16 Q. All right. Brian Thompson,<br/>17 that would be one of the ones that Rich<br/>18 told you about?<br/>19 A. Yes.<br/>20 Q. What were you doing with his<br/>21 employee counseling reports in that<br/>22 briefcase?<br/>23 A. Again, I don't know exactly</p>                                                                                |
| <p style="text-align: right;">Page 262</p> <p>1 Q. All right. Why did you have<br/>2 his employee counseling report in your<br/>3 briefcase?<br/>4 A. Again, anything that was in<br/>5 my briefcase was anything that Rich<br/>6 requested copies of.<br/>7 Q. And this would have been --<br/>8 anything you had you would have had to<br/>9 have in that briefcase before September<br/>10 the 3rd because that's when you were<br/>11 terminated, right?<br/>12 A. On September 3rd, yes.<br/>13 Q. And you took the briefcase or<br/>14 the briefcase with you when you left?<br/>15 A. As I testified, it was given<br/>16 to me and told my services were no longer<br/>17 needed.<br/>18 Q. Who gave you the briefcase?<br/>19 A. Rich Alexander.<br/>20 Q. Was anybody with you other<br/>21 than Rich Alexander when you were<br/>22 terminated?<br/>23 A. Yes.</p> | <p style="text-align: right;">Page 264</p> <p>1 what was in there at the time. I just,<br/>2 again, turned over everything that I had<br/>3 that pertained to Cracker Barrel.<br/>4 Q. Did you put it in there or<br/>5 did somebody else put it in your<br/>6 briefcase?<br/>7 A. Rich also had the combination<br/>8 to it. It was where he secured<br/>9 management documentation until he took it<br/>10 back with him.<br/>11 Q. Well, how about Ralph<br/>12 Whiting, is he one of the ones Rich told<br/>13 you about?<br/>14 A. Again, he was a transferee<br/>15 in, and I was not told he was on final<br/>16 written warning, no.<br/>17 Q. All right. Did you know --<br/>18 I'm not saying he was. Do you know<br/>19 whether he was or not?<br/>20 A. Was or not what?<br/>21 Q. On final written warning.<br/>22 A. No, I don't.<br/>23 Q. What about James Heater? Who</p> |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 265</p> <p>1 <b>is that?</b></p> <p>2 A. That's Tony's real name. I</p> <p>3 just couldn't remember his real name.</p> <p>4 <b>Q. What kind of warning did he</b></p> <p>5 <b>have?</b></p> <p>6 A. Again, I would have to read</p> <p>7 it. It's been too long ago.</p> <p>8 <b>Q. How about Ashley Moore?</b></p> <p>9 A. Yes, I was informed that she</p> <p>10 was on final written.</p> <p>11 <b>Q. Anybody else you were</b></p> <p>12 <b>informed was on a warning?</b></p> <p>13 A. No.</p> <p>14 <b>Q. It's kind of coincidental</b></p> <p>15 <b>that those are the ones that were in that</b></p> <p>16 <b>locked briefcase, isn't it?</b></p> <p>17 A. Again, the briefcase, Rich</p> <p>18 had access to it as I did.</p> <p>19 <b>Q. Who did you call and ask to</b></p> <p>20 <b>get these documents for you after you</b></p> <p>21 <b>were fired?</b></p> <p>22 A. Ma'am, I testified that --</p> <p>23 <b>Q. I know what you testified.</b></p> | <p style="text-align: right;">Page 267</p> <p>1 <b>Q. Did anybody give you any</b></p> <p>2 <b>documents after you were terminated?</b></p> <p>3 MS. YORK: Asked and</p> <p>4 answered.</p> <p>5 MS. BUSBY: No, it wasn't.</p> <p>6 MS. YORK: Yes, it was.</p> <p>7 MS. BUSBY: No, it wasn't.</p> <p>8 MS. YORK: Yes, it was.</p> <p>9 <b>Q. Did anybody give you any</b></p> <p>10 <b>documents after you were terminated?</b></p> <p>11 MS. YORK: Asked and</p> <p>12 answered.</p> <p>13 MS. BUSBY: Well, he can</p> <p>14 answer it again. If you're wrong, you're</p> <p>15 wrong.</p> <p>16 MS. YORK: You're being</p> <p>17 argumentative.</p> <p>18 MS. BUSBY: Well, I just want</p> <p>19 him to tell the truth.</p> <p>20 MS. YORK: He told the truth.</p> <p>21 He did answer it. It's asked and</p> <p>22 answered.</p> <p>23 MS. BUSBY: Well, let him</p>                                            |
| <p style="text-align: right;">Page 266</p> <p>1 <b>I'm asking you.</b></p> <p>2 MS. YORK: You're being</p> <p>3 argumentative.</p> <p>4 MS. BUSBY: No, I'm asking</p> <p>5 him and I'm giving him a chance to --</p> <p>6 <b>Q. You know you're under oath?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. All right. And you know that</b></p> <p>9 <b>in order to have had anything like this</b></p> <p>10 <b>in your possession -- you weren't</b></p> <p>11 <b>supposed to have anybody's personnel</b></p> <p>12 <b>information, correct?</b></p> <p>13 A. Again, when I was terminated,</p> <p>14 I had a briefcase. I went home. I</p> <p>15 tossed the briefcase to the side and</p> <p>16 started my resume, and I started seeking</p> <p>17 employment.</p> <p>18 <b>Q. Did you ask anybody to get</b></p> <p>19 <b>these documents for you after you were</b></p> <p>20 <b>terminated?</b></p> <p>21 A. No.</p> <p>22 MS. YORK: It was asked and</p> <p>23 answered.</p>                            | <p style="text-align: right;">Page 268</p> <p>1 tell me again.</p> <p>2 <b>Q. (By Ms. Busby) Did anybody</b></p> <p>3 <b>give you any documents after you were</b></p> <p>4 <b>terminated?</b></p> <p>5 A. Ma'am, I've already answered</p> <p>6 that question.</p> <p>7 <b>Q. Well, answer it again.</b></p> <p>8 A. Again, ma'am, I've already</p> <p>9 answered that question.</p> <p>10 <b>Q. Well, you better answer it</b></p> <p>11 <b>again. Yes or no?</b></p> <p>12 MS. YORK: He had better not</p> <p>13 answer it again.</p> <p>14 MS. BUSBY: Are you</p> <p>15 instructing him not to answer?</p> <p>16 MS. YORK: I'm instructing</p> <p>17 him -- for you not to be argumentative</p> <p>18 with him.</p> <p>19 MS. BUSBY: Are you</p> <p>20 instructing him not to answer?</p> <p>21 MS. YORK: I'm instructing</p> <p>22 you not to be argumentative with him.</p> <p>23 MS. BUSBY: Well, then</p> |

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| <p style="text-align: right;">Page 269</p> <p>1 instruct him to answer yes or no.<br/> 2 MS. YORK: He's answered the<br/> 3 question. Asked and answered.<br/> 4 MS. BUSBY: What's the<br/> 5 answer? I don't remember it.<br/> 6 MS. YORK: He said no.<br/> 7 <b>Q. (By Ms. Busby) Is it your</b><br/> 8 <b>testimony that no nobody gave you</b><br/> 9 <b>documents from Cracker Barrel after you</b><br/> 10 <b>left?</b><br/> 11 A. Yes.<br/> 12 <b>Q. Your lawyer said your answer</b><br/> 13 <b>is no. Is your answer no?</b><br/> 14 A. That's correct.<br/> 15 <b>Q. All right. Good. Then let's</b><br/> 16 <b>take a look at some of the stuff that</b><br/> 17 <b>you've produced.</b><br/> 18 You produced a document that<br/> 19 is Bates stamped 134 to 139. And it is a<br/> 20 document that was printed on September<br/> 21 the 8th, 2005 at 10:52 a.m. Now, you<br/> 22 didn't work for Cracker Barrel on<br/> 23 September the 8th, 2005 at 10:52 a.m.,</p>                                                                                                                                  | <p style="text-align: right;">Page 271</p> <p>1 <b>documentation after you left.</b><br/> 2 A. And as I testified, I don't<br/> 3 know where that came from with the dates<br/> 4 and things on it, but I gave them<br/> 5 everything I got from the time that I<br/> 6 terminated.<br/> 7 <b>Q. All right. Well, let's start</b><br/> 8 <b>over. Who gave you documents after you</b><br/> 9 <b>were terminated from Cracker Barrel?</b><br/> 10 A. No one.<br/> 11 MS. YORK: Asked and<br/> 12 answered.<br/> 13 MS. BUSBY: In the face of<br/> 14 this evidence that you've produced, do<br/> 15 you want him to not answer that question<br/> 16 again?<br/> 17 MS. YORK: He's already<br/> 18 answered it.<br/> 19 MS. BUSBY: So then I need to<br/> 20 be asking you who you have improperly<br/> 21 gotten confidential business information<br/> 22 from.<br/> 23 MS. YORK: We could have</p>                                                                     |
| <p style="text-align: right;">Page 270</p> <p>1 <b>did you?</b><br/> 2 A. No, I did not.<br/> 3 <b>Q. All right. And it's an</b><br/> 4 <b>employee listing that has all the</b><br/> 5 <b>employees with their payroll ID, phone</b><br/> 6 <b>numbers, birth date, date hired, and</b><br/> 7 <b>their status. That's a confidential</b><br/> 8 <b>business record of Cracker Barrel, is it</b><br/> 9 <b>not?</b><br/> 10 A. Yes, it is.<br/> 11 <b>Q. And when you print stuff, it</b><br/> 12 <b>tells you the page numbers that you're</b><br/> 13 <b>printing, correct?</b><br/> 14 A. I have to see the document.<br/> 15 <b>Q. All right. I'll be happy for</b><br/> 16 <b>you to. I'm not going to mark that as an</b><br/> 17 <b>exhibit because it violates personnel</b><br/> 18 <b>information. But I would like for you to</b><br/> 19 <b>explain to me how you had that in your</b><br/> 20 <b>possession after you were terminated to</b><br/> 21 <b>produce it to your lawyers to produce to</b><br/> 22 <b>us since according to your sworn</b><br/> 23 <b>testimony nobody gave you any</b></p> | <p style="text-align: right;">Page 272</p> <p>1 gotten the file from EEOC. We could have<br/> 2 gotten it from anywhere. It was asked<br/> 3 and answered.<br/> 4 MS. BUSBY: So you're making<br/> 5 yourself a witness? Is that what you're<br/> 6 telling me?<br/> 7 MR. BREEDLOVE: Listen. It's<br/> 8 Cracker Barrel's. If Cracker Barrel<br/> 9 cannot keep control of their documents<br/> 10 and they get out, it is not our problem.<br/> 11 It's Cracker Barrel's problem.<br/> 12 MS. YORK: But you're not<br/> 13 going to testify that he got documents<br/> 14 from someone else that he asked because<br/> 15 he's told you he did not do that.<br/> 16 MR. BREEDLOVE: We have<br/> 17 documents that we provided you, and<br/> 18 you've got to live with that.<br/> 19 MS. BUSBY: Well, we'll see<br/> 20 if the judge thinks I have to live with<br/> 21 it or not.<br/> 22 MR. BREEDLOVE: You can do<br/> 23 whatever you want to do. I don't think</p> |

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| <p style="text-align: right;">Page 273</p> <p>1 the judge is going to have a problem with<br/>2 you all having -- if employees or whoever<br/>3 are providing other folks with Cracker<br/>4 Barrel documents, that's not our problem.<br/>5 That's your problem. And you can make it<br/>6 as big an issue at this deposition as you<br/>7 want. But the facts are clear. He's<br/>8 testified that he hasn't given you -- no<br/>9 one in Cracker Barrel has given him<br/>10 documents.<br/>11 MS. YORK: After he left. He<br/>12 testified to it at least ten times.<br/>13 MR. BREEDLOVE: And that's<br/>14 his testimony.<br/>15 MS. BUSBY: I want to make<br/>16 sure the record is clear then. What you<br/>17 are representing as an officer of the<br/>18 court then is that what you have produced<br/>19 to me may not be documents that Mr.<br/>20 Rodgers gave you?<br/>21 MS. YORK: I'm not testifying<br/>22 to anything.<br/>23 MS. BUSBY: I'm not asking</p> | <p style="text-align: right;">Page 275</p> <p>1 MS. BUSBY: I guess that's<br/>2 what I'm trying to get to. If these are<br/>3 not documents in Mr. Rodgers' possession,<br/>4 then I just need somebody to tell me. Do<br/>5 y'all not have records? Because the next<br/>6 document that I'm going to ask him about<br/>7 is plaintiff document 140, which is<br/>8 Cracker Barrel 574, Employee Turnover<br/>9 Tracking Fiscal Year 2005, Fourth<br/>10 Quarter.<br/>11 <b>Q. Is this a document that you</b><br/>12 <b>had in your possession?</b><br/>13 A. Again, ma'am, I turned in so<br/>14 many documents, I don't know exactly what<br/>15 every document was that was submitted.<br/>16 <b>Q. Did you have a copy of</b><br/>17 <b>Cracker Barrel Old Country Store Income</b><br/>18 <b>Statement?</b><br/>19 A. Again, ma'am, I had a lot of<br/>20 documents, and I don't know what EEOC did<br/>21 or didn't do.<br/>22 <b>Q. Well, you agree that the EEOC</b><br/>23 <b>could not have requested you to print</b></p> |
| <p style="text-align: right;">Page 274</p> <p>1 you to testify. I'm asking you to<br/>2 represent.<br/>3 MS. YORK: I'm not putting<br/>4 anything on the record because I'm not<br/>5 the witness. But he's been asked the<br/>6 question and answered it.<br/>7 MS. BUSBY: Well, these<br/>8 documents were produced as documents in<br/>9 Mr. Rodgers' possession. Is that correct<br/>10 or incorrect?<br/>11 MR. BREEDLOVE: There was an<br/>12 EEOC investigation, and if those<br/>13 documents were provided by -- we don't<br/>14 know. If he doesn't know, we don't know,<br/>15 but they are there, and you have them.<br/>16 He gave you at your request everything he<br/>17 had that was -- that we had being honest<br/>18 and straightforward. If we were trying<br/>19 to hide something --<br/>20 MS. YORK: We wouldn't have<br/>21 provided it.<br/>22 MR. BREEDLOVE: -- you<br/>23 wouldn't have them.</p>                                                  | <p style="text-align: right;">Page 276</p> <p>1 <b>something on September the 13th, 2005</b><br/>2 <b>when you weren't there?</b><br/>3 A. I wasn't there then.<br/>4 <b>Q. So somebody printed this on</b><br/>5 <b>9/13/2005?</b><br/>6 A. Again, ma'am, I don't know<br/>7 about the document.<br/>8 <b>Q. Which employees did you talk</b><br/>9 <b>to after you were terminated?</b><br/>10 A. I live in the town. All<br/>11 employees, they see me, they speak to<br/>12 me. So I have general conversations with<br/>13 --<br/>14 <b>Q. Which managers did you talk</b><br/>15 <b>to?</b><br/>16 A. Again, they all live in the<br/>17 market.<br/>18 <b>Q. Well, do you still live in</b><br/>19 <b>Montgomery?</b><br/>20 A. No.<br/>21 <b>Q. Well, what market are you</b><br/>22 <b>referring to?</b><br/>23 A. Montgomery.</p>                                                                                                                                                                                            |

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| <p style="text-align: right;">Page 277</p> <p>1 Q. Okay.</p> <p>2 A. I lived there until I</p> <p>3 relocated to Atlanta.</p> <p>4 Q. And when was that?</p> <p>5 A. January of this year.</p> <p>6 Q. January of '06 or '07?</p> <p>7 A. '07.</p> <p>8 Q. All right. Which employees</p> <p>9 have you kept regular contact with?</p> <p>10 A. I haven't kept regular</p> <p>11 contact with any of the employees.</p> <p>12 Q. Have you spoken to any of the</p> <p>13 managers since you were terminated?</p> <p>14 A. Yes.</p> <p>15 Q. Which ones?</p> <p>16 A. All of them. I've seen them</p> <p>17 all since my stay in Montgomery before I</p> <p>18 moved back here.</p> <p>19 Q. Did you see any of them on a</p> <p>20 social basis?</p> <p>21 A. No.</p> <p>22 Q. Have you been to dinner with</p> <p>23 any of them?</p>                                                                               | <p style="text-align: right;">Page 279</p> <p>1 other. I live in the same community, and</p> <p>2 I saw them all.</p> <p>3 Q. So if I understand your</p> <p>4 testimony, did you talk to any of the --</p> <p>5 any of the other managers in the</p> <p>6 Montgomery location about your</p> <p>7 termination?</p> <p>8 A. Again, ma'am, I can't --</p> <p>9 we've had general conversation since the</p> <p>10 day I was terminated.</p> <p>11 Q. Who have you had general</p> <p>12 conversation with?</p> <p>13 A. With all the employees. No</p> <p>14 single.</p> <p>15 Q. All two hundred and fifty of</p> <p>16 them?</p> <p>17 A. With all those who have</p> <p>18 contacted me or seen me on the streets or</p> <p>19 I've seen somewhere. I mean, I --</p> <p>20 Q. Can you name one specific</p> <p>21 person that you've discussed your</p> <p>22 termination with?</p> <p>23 A. No, I can't, because I don't</p> |
| <p style="text-align: right;">Page 278</p> <p>1 A. No.</p> <p>2 Q. Have you been to lunch with</p> <p>3 any of them?</p> <p>4 A. No.</p> <p>5 Q. Have you been out with any of</p> <p>6 them period --</p> <p>7 A. No.</p> <p>8 Q. -- in any manner? Have you</p> <p>9 talked to them on the telephone?</p> <p>10 A. Again, they've all called to</p> <p>11 say hello, the employees. They all have</p> <p>12 my number. I never made my number</p> <p>13 secret.</p> <p>14 Q. Did you call any of them?</p> <p>15 A. Again, I can't tell you.</p> <p>16 I've spoken to them, but I can't tell you</p> <p>17 if I called them or they called me.</p> <p>18 Q. Did you call Carlos Browning?</p> <p>19 A. I spoke with Carlos, but I</p> <p>20 can't tell you the last time I talked to</p> <p>21 him and if he called me or I called him.</p> <p>22 Q. Did you call Tony?</p> <p>23 A. Again, ma'am, we saw each</p> | <p style="text-align: right;">Page 280</p> <p>1 recall the conversations. I just said</p> <p>2 I've spoken with them.</p> <p>3 Q. Okay. You were written up</p> <p>4 when you were in Montgomery, correct?</p> <p>5 A. Yes.</p> <p>6 Q. What were you written up for?</p> <p>7 A. I don't recall.</p> <p>8 Q. You don't recall?</p> <p>9 A. No.</p> <p>10 Q. It wasn't important to you?</p> <p>11 A. Yes, ma'am. It was almost</p> <p>12 two years ago. I can't remember every</p> <p>13 incident and every date.</p> <p>14 Q. Well, what were you</p> <p>15 terminated for?</p> <p>16 A. Again, he told me that my</p> <p>17 services were no longer needed, and that</p> <p>18 documentation I surrendered over to the</p> <p>19 EEOC -- I don't remember the words of</p> <p>20 that documentation.</p> <p>21 MS. BUSBY: All right. Let</p> <p>22 me show you what I'm going to mark as</p> <p>23 Exhibit 6.</p>            |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 281</p> <p>1 (Whereupon, Defendant's<br/>2 Exhibit No. 6 was marked for<br/>3 identification and copy of same is<br/>4 attached hereto.)<br/>5 <b>Q. Take a minute to look at</b><br/>6 <b>that.</b><br/>7 A. Okay.<br/>8 <b>Q. All right. This is an</b><br/>9 <b>employee counseling report dated 8/12/05,</b><br/>10 <b>final written, correct?</b><br/>11 A. Yes.<br/>12 <b>Q. Signed by you and Mr.</b><br/>13 <b>Alexander on August the 20th, 2005; is</b><br/>14 <b>that right?</b><br/>15 A. Yes.<br/>16 <b>Q. This Employee Counseling</b><br/>17 <b>Report is related to operational</b><br/>18 <b>failures; is that correct?</b><br/>19 A. It's related to a food<br/>20 incident on that date.<br/>21 <b>Q. Well, the problem situation</b><br/>22 <b>at the top part is related to a specific</b><br/>23 <b>food incident, correct?</b></p>                     | <p style="text-align: right;">Page 283</p> <p>1 <b>if you didn't have improvement in these</b><br/>2 <b>operational issues, that further</b><br/>3 <b>disciplinary action up to and including</b><br/>4 <b>termination could occur?</b><br/>5 A. That's a part of this<br/>6 counseling, yes.<br/>7 <b>Q. Do you recollect discussing</b><br/>8 <b>this with him?</b><br/>9 A. Yes.<br/>10 <b>Q. All right. Tell me about</b><br/>11 <b>that conversation.</b><br/>12 A. What this doesn't state is<br/>13 the fact that it's a brand new restaurant<br/>14 and it has almost two hundred plus<br/>15 employees, that the store sat unopened<br/>16 for two months where they couldn't get<br/>17 enough employees and trainers to come<br/>18 down to train them, that the store opened<br/>19 with another Cracker Barrel right there<br/>20 in the market. So projected sales for<br/>21 that restaurant were not met due to their<br/>22 projections.<br/>23 And the guest complaints --</p>                                                                   |
| <p style="text-align: right;">Page 282</p> <p>1 A. Yes.<br/>2 <b>Q. Then the corrective action</b><br/>3 <b>plan summary discusses your sales, your</b><br/>4 <b>guest complaints, and your food cost</b><br/>5 <b>issues, correct?</b><br/>6 A. Yes.<br/>7 <b>Q. And it refers to the</b><br/>8 <b>conversations that you and Mr. Alexander</b><br/>9 <b>have had related to these issues as well</b><br/>10 <b>as others, correct?</b><br/>11 A. Yes.<br/>12 <b>Q. Did you discuss this review</b><br/>13 <b>with him?</b><br/>14 A. Yes.<br/>15 <b>Q. All right. So what happens</b><br/>16 <b>is on the review I guess he came to the</b><br/>17 <b>store and y'all sat down together and</b><br/>18 <b>went over it before you executed it?</b><br/>19 A. Yes.<br/>20 <b>Q. And that would have been on</b><br/>21 <b>August the 20th?</b><br/>22 A. Yes.<br/>23 <b>Q. And he explained to you that</b></p> | <p style="text-align: right;">Page 284</p> <p>1 what it doesn't state is twenty-nine for<br/>2 new store opening, and again, you're<br/>3 looking at two hundred employees who is<br/>4 not aware of Cracker Barrel culture and<br/>5 is not unusual for a brand new store,<br/>6 because we received all new store<br/>7 openings numbers at the same time. So<br/>8 the numbers that's there are average<br/>9 numbers based on the staffing issues that<br/>10 they had prior to me getting there, the<br/>11 training issues that they had, the<br/>12 turnover that they had, the level of<br/>13 commitment from the management team with<br/>14 these new employees, and the fact that<br/>15 there was labor issues as far as sales,<br/>16 the issues are -- because you have to<br/>17 have the sales in order to generate the<br/>18 labor.<br/>19 <b>Q. There had been a number of</b><br/>20 <b>complaints by guests over the course of</b><br/>21 <b>the summer; is that correct?</b><br/>22 A. Yes.<br/>23 <b>Q. And this is something that</b></p> |

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## FREEDOM COURT REPORTING

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 285</p> <p>1 you had discussed with -- I guess you<br/>2 discussed this with both the district<br/>3 manager, Mr. Alexander, and with Ron<br/>4 Phillips as I see it; is that right?<br/>5 A. We always discussed<br/>6 operations, yes.<br/>7 Q. Who is Monique Frank?<br/>8 A. Retail district manager.<br/>9 Q. And Laura Murchison?<br/>10 A. Retail regional<br/>11 vice-president.<br/>12 Q. Okay. I'm going to give you<br/>13 -- apparently Mr. Phillips e-mailed you<br/>14 on July 24th along with the other people<br/>15 that I mentioned seeking you to respond<br/>16 to nine complaints that had been received<br/>17 in the last eight days related to the<br/>18 operation. Do you recollect that e-mail?<br/>19 A. Yes.<br/>20 (Whereupon, a discussion off<br/>21 the record was held.)<br/>22 (Whereupon, Defendant's<br/>23 Exhibit No. 7 was marked for</p>                                                                                          | <p style="text-align: right;">Page 287</p> <p>1 Okay. I did. I put it in<br/>2 the right order for you as I understand<br/>3 it. Let me just give it to you. You can<br/>4 put the clip back on it after you look at<br/>5 it and we can make sure. It looks like<br/>6 page two is an e-mail that Mr. Phillips<br/>7 sends to you attaching, I guess, a guest<br/>8 complaint, a customer complaint that<br/>9 starts at the bottom of page two and goes<br/>10 to page four.<br/>11 A. Yes.<br/>12 Q. Okay. And he's asking you a<br/>13 bunch of questions in his e-mail to<br/>14 respond. And I don't have it so you'll<br/>15 have to tell us.<br/>16 A. Yes.<br/>17 Q. What's the date of the<br/>18 e-mail?<br/>19 A. 7/24.<br/>20 Q. All right. So on 7/24 he<br/>21 sends you this complaint and says, you<br/>22 know, we can't have this. We've got to<br/>23 have consistency. What's going on? Is</p> |
| <p style="text-align: right;">Page 286</p> <p>1 identification and copy of same is<br/>2 attached hereto.)<br/>3 Q. I'm going to show you what<br/>4 I've marked as Exhibit 7. If you look on<br/>5 the second page of Exhibit 7, I think if<br/>6 I was looking -- I was trying to get it<br/>7 in the correct order for you. I<br/>8 unstapled it and clipped it back.<br/>9 It appears to me that Mr.<br/>10 Phillips sent you an e-mail and copied<br/>11 the people we discussed attaching a<br/>12 complaint is what it looks like is below<br/>13 it.<br/>14 A. At the very bottom?<br/>15 Q. Yes, sir, and the next few<br/>16 pages. You unstapled it and rearranged<br/>17 it because I think that's the order. Is<br/>18 that what that is? And then you respond<br/>19 on the top page. Let me look at it. I<br/>20 was trying to get it in order. Maybe we<br/>21 should just mark it separate. Why don't<br/>22 we do that? Well, we can't because<br/>23 that's the way it -- I apologize.</p> | <p style="text-align: right;">Page 288</p> <p>1 that correct?<br/>2 A. Yes.<br/>3 Q. All right. And then on the<br/>4 first page, I've tried to put it in<br/>5 order, of Exhibit 7, that is your<br/>6 response?<br/>7 A. Yes.<br/>8 Q. Is that correct? Okay. So<br/>9 basically he's putting you on notice<br/>10 that, look, we're getting too many<br/>11 complaints about inconsistency and<br/>12 service issues and those kind of things,<br/>13 and you're going to have to give me the<br/>14 response to this. And the first page is<br/>15 your response to him?<br/>16 A. Yes.<br/>17 Q. Okay. After you sent that<br/>18 e-mail, did you talk to him about his<br/>19 concerns with these problems?<br/>20 A. Yes.<br/>21 Q. All right. Tell me when was<br/>22 that and tell me about the conversation.<br/>23 A. Again, the conversation was</p>                                                    |

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## FREEDOM COURT REPORTING

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1 with Ron, myself, and Rich Alexander at  
2 the Montgomery location.

3 **Q. Okay. And when did that**  
4 **occur to the best of your recollection?**

5 A. I think about two weeks --  
6 approximately about two weeks after this.

7 **Q. Okay. So y'all met together,**  
8 **and you talked to him about these issues,**  
9 **correct?**

10 A. Yes.

11 **Q. All right. And then what**  
12 **occurs thereafter is what we've gone**  
13 **over, issues continue operationally to**  
14 **need to be addressed, and that is the**  
15 **counseling that we reviewed which was**  
16 **August 12th of '05; is that correct?**

17 A. Well, after calling this  
18 meeting with Ron Phillips, this meeting  
19 -- this e-mail was sent to -- requesting  
20 a meeting with Ron. Ron then got in  
21 contact with Rich and they showed up at  
22 the store. Shortly after we had the  
23 meeting with this, I received this

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1 (indicating).

2 **Q. Which is Exhibit 6 that we've**  
3 **already gone over?**

4 A. Yes.

5 **Q. Okay. So the counseling**  
6 **report puts into a formal documentation,**  
7 **I guess, the meeting that you've had and**  
8 **the issues that you've discussed with Mr.**  
9 **Phillips and Mr. Alexander?**

10 A. No.

11 **Q. Okay. I misunderstood you**  
12 **then. Let's just go --**

13 A. This just came -- this came  
14 after this meeting.

15 **Q. Okay. Let me see this. Give**  
16 **me that. We have it in the order then.**  
17 **What happens is apparently these customer**  
18 **complaints must be called in to the home**  
19 **office?**

20 A. Yes.

21 **Q. Or the people get on the**  
22 **website or something and make complaints?**

23 A. Yes.

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1 **Q. So because there's so many of**  
2 **them they get apparently brought to the**  
3 **attention by home office to Ron Phillips?**

4 A. Well, they always -- any  
5 complaint goes to the regional  
6 vice-president of any store in his  
7 region.

8 **Q. All right. So he gets the**  
9 **complaints, and he writes you on July the**  
10 **24th and basically says this is nine**  
11 **complaints in eight days, our operation**  
12 **-- you know, he tells you all the stuff**  
13 **in our operation has got to be**  
14 **consistent. Please respond to me via**  
15 **e-mail no later than 7/27.**

16 All right. Then -- oh, I  
17 see. There's an e-mail in between.  
18 Okay. Then I guess you didn't respond,  
19 and Ron says, Dwight, I sent you the  
20 below on 7/24, please update me  
21 immediately on what's going on. I want  
22 some feedback by Thursday the 27th. And  
23 then through a couple of -- he sends it

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1 to you again, and then finally on the  
2 31st you say you apologize for the delay  
3 in the response, and here is my response  
4 to what the issues are?

5 A. I don't recall him sending it  
6 several times.

7 **Q. I'm just going by what's on**  
8 **the document of Exhibit 7. I'm just**  
9 **following the trail to go up. 24th,**  
10 **31st, and then your response is on the**  
11 **31st?**

12 A. On the 24th, he said he  
13 needed it by the 27th.

14 **Q. Right.**

15 A. But I had to research  
16 everything and spoke with Rich that I was  
17 going to send the response, but I have to  
18 research the information because I wanted  
19 to give him detail versus a general  
20 e-mail. And then the e-mail was sent to  
21 him on the 31st.

22 **Q. All right. So you respond on**  
23 **the 31st?**

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## FREEDOM COURT REPORTING

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 293</p> <p>1 A. Yes.</p> <p>2 Q. And you say I apologize for</p> <p>3 the delay in the response, and you</p> <p>4 respond?</p> <p>5 A. Yes.</p> <p>6 Q. And what you're telling me is</p> <p>7 in addition to this response, y'all spoke</p> <p>8 about it thereafter?</p> <p>9 A. Yes.</p> <p>10 Q. All right. And then after</p> <p>11 you spoke about it, did you talk about</p> <p>12 any of these other issues in here? You</p> <p>13 say that Rich is trying to coach you and</p> <p>14 is committed to talking to you about your</p> <p>15 performance on a weekly agenda review,</p> <p>16 and you're hoping that this will have an</p> <p>17 immediate impact on guest service and</p> <p>18 consistency. And I guess that's what --</p> <p>19 and then y'all have a meeting thereafter</p> <p>20 to your recollection?</p> <p>21 A. Yes. The reviews didn't</p> <p>22 happen, and I requested the meeting, yes.</p> <p>23 Q. Okay. So you didn't have a</p> | <p style="text-align: right;">Page 295</p> <p>1 recollection?</p> <p>2 A. I don't recall.</p> <p>3 MS. BUSBY: All right. Let</p> <p>4 me show you what I'm marking as Exhibit</p> <p>5 No. 8.</p> <p>6 (Whereupon, Defendant's</p> <p>7 Exhibit No. 8 was marked for</p> <p>8 identification and copy of same is</p> <p>9 attached hereto.)</p> <p>10 Q. It appears to me that what</p> <p>11 y'all were supposed to do was have weekly</p> <p>12 telephone calls, if not meetings, where</p> <p>13 you were to give reports on certain</p> <p>14 issues and including food costs and other</p> <p>15 things. Do you recollect that?</p> <p>16 A. I don't recall. I'll have to</p> <p>17 read it.</p> <p>18 Q. Well, let me show you what</p> <p>19 I've marked as Exhibit 8. This is the</p> <p>20 Employee Counseling Report which is your</p> <p>21 termination which was given on, according</p> <p>22 to this, September the 3rd, 2005; is that</p> <p>23 right?</p>                       |
| <p style="text-align: right;">Page 294</p> <p>1 meeting?</p> <p>2 A. We did have a meeting.</p> <p>3 Q. You did have a meeting?</p> <p>4 A. Yes.</p> <p>5 Q. And we don't know when that</p> <p>6 meeting was, but it was sometime in your</p> <p>7 recollection between July the 31st and</p> <p>8 August the 12th?</p> <p>9 A. Yes.</p> <p>10 Q. All right. And then on</p> <p>11 August the 12th, you're given the final</p> <p>12 written warning?</p> <p>13 A. Yes.</p> <p>14 Q. Which is an employee</p> <p>15 counseling report, Exhibit 6?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. All right. And that's</p> <p>18 August the 12th?</p> <p>19 A. Yes.</p> <p>20 Q. Now, between August the 12th</p> <p>21 and your termination of September the</p> <p>22 3rd, do you have any meetings or</p> <p>23 conversations with anybody to your</p>                                                                                                                                                         | <p style="text-align: right;">Page 296</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And attached to that</p> <p>3 is, I guess, the performance issues that</p> <p>4 y'all reviewed and dates of certain</p> <p>5 occurrences?</p> <p>6 A. No. This wasn't -- yes, this</p> <p>7 was handed to me at termination, yes.</p> <p>8 Q. Okay. And you refused to</p> <p>9 sign it, according to the note?</p> <p>10 A. No, I did not. I wasn't</p> <p>11 asked to sign it.</p> <p>12 Q. Okay. Fair enough. Well,</p> <p>13 let's just go over -- let's start on page</p> <p>14 two and just see if any of these notes</p> <p>15 give you any recollection of these</p> <p>16 occurrences. You had sales building day</p> <p>17 on July 13th. What is that?</p> <p>18 A. That's a day where the retail</p> <p>19 manager, the general manager, and the</p> <p>20 training coordinator meet with the</p> <p>21 district manager to discuss the</p> <p>22 operations.</p> <p>23 Q. All right. And this says on</p> |

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| <p style="text-align: right;">Page 297</p> <p>1 that date you were not prepared. Any</p> <p>2 recollection of anything like that? It</p> <p>3 says you weren't prepared and they asked</p> <p>4 you for some sort of outline via e-mail</p> <p>5 to lay out when you and your retail</p> <p>6 partner would meet to plan business prior</p> <p>7 to each Wednesday call?</p> <p>8 A. I do recall this, but what it</p> <p>9 does not state is that Monique, the</p> <p>10 retail district manager, gave Teresa, the</p> <p>11 retail manager, off.</p> <p>12 Q. What do you mean by that?</p> <p>13 A. That was her supervisor, the</p> <p>14 retail district manager, the retail</p> <p>15 manager's supervisor.</p> <p>16 Q. So what you're saying is you</p> <p>17 weren't prepared and the reason you</p> <p>18 weren't is because the retail manager was</p> <p>19 off?</p> <p>20 A. No. I was missing her</p> <p>21 portion of the report. The restaurant</p> <p>22 and retail goes hand in hand, and I was</p> <p>23 missing her portion of the report.</p> | <p style="text-align: right;">Page 299</p> <p>1 or the other of you was not there?</p> <p>2 A. Yes.</p> <p>3 Q. Well, did you do that?</p> <p>4 A. Yes.</p> <p>5 Q. Did you do an e-mail about</p> <p>6 it?</p> <p>7 A. I don't remember if it was an</p> <p>8 e-mail, because we spoke every day</p> <p>9 because he wasn't in the market.</p> <p>10 Q. Okay. This document says you</p> <p>11 didn't do the e-mail. That's why I'm</p> <p>12 asking if you have a different</p> <p>13 recollection.</p> <p>14 A. Again, I don't remember an</p> <p>15 e-mail.</p> <p>16 Q. Okay. Then it says for nine</p> <p>17 weeks straight you did not meet the</p> <p>18 district deadline for sales building day</p> <p>19 information, meaning you're supposed to</p> <p>20 give it to your district manager by</p> <p>21 Tuesday at 5:00 and that you either</p> <p>22 provided no information or only partial</p> <p>23 information usually on Wednesday. Why</p>                                                                                          |
| <p style="text-align: right;">Page 298</p> <p>1 Q. All right. And what you've</p> <p>2 said is you don't have it because she's</p> <p>3 off, I take it? I mean, is that what</p> <p>4 you're telling me?</p> <p>5 A. Yes.</p> <p>6 Q. You told me you didn't have</p> <p>7 it because the woman was off?</p> <p>8 A. I told him I did not have the</p> <p>9 retail portion.</p> <p>10 Q. All right. Well, I</p> <p>11 appreciate you telling me that. But what</p> <p>12 I was really getting to is: Did you ever</p> <p>13 do the outline via e-mail?</p> <p>14 A. I don't understand what</p> <p>15 you're asking.</p> <p>16 Q. Well, it says in here that</p> <p>17 you were supposed to -- an outline via</p> <p>18 e-mail was requested to lay out when you</p> <p>19 and your retail partner would meet, I</p> <p>20 guess, so that you could discuss what was</p> <p>21 going to happen before each call so that</p> <p>22 you wouldn't be in a position of not</p> <p>23 being able to give the report because one</p>                                     | <p style="text-align: right;">Page 300</p> <p>1 did you not meet the 5:00 p.m. Tuesday</p> <p>2 deadline?</p> <p>3 A. Again, ma'am, this document</p> <p>4 was given to me on September the 3rd at</p> <p>5 termination. Nine weeks, per this</p> <p>6 document, had lapsed before this was even</p> <p>7 addressed. This document was simply</p> <p>8 handed to me. To say that it did or</p> <p>9 didn't happen, I just got this and said,</p> <p>10 you're no longer needed. So I wasn't --</p> <p>11 Q. They handed it to you and you</p> <p>12 just gave it back?</p> <p>13 A. I wasn't to dispute or do</p> <p>14 anything to this document because I</p> <p>15 wasn't afforded the opportunity. It was</p> <p>16 just you're no longer needed</p> <p>17 (indicating).</p> <p>18 Q. Okay. But I'm trying to get</p> <p>19 to -- I understand that at the time on</p> <p>20 the day. I'm just trying to get to, I</p> <p>21 mean, if you're ever going to have</p> <p>22 anything to say about these categories,</p> <p>23 today is your day.</p> |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 301</p> <p>1 A. What I'm saying is over a<br/>2 nine-week period of time, from the<br/>3 previous documentation and things of that<br/>4 nature, nine weeks period of time of not<br/>5 doing something, then it wouldn't have --<br/>6 I wouldn't have just received a<br/>7 documentation or communication nine weeks<br/>8 later at termination.<br/>9 Q. Well, I think what this is<br/>10 saying is he's been telling you this, but<br/>11 you still didn't give it to him. And I<br/>12 think what you're saying is you never<br/>13 investigated it because it was handed to<br/>14 you that day. So you don't -- I guess<br/>15 you -- are you saying you don't agree or<br/>16 disagree?<br/>17 A. No, ma'am. The part that we<br/>18 were discussing earlier was the one<br/>19 single date. The over the nine-week<br/>20 period we're talking about June, July,<br/>21 and August from this date.<br/>22 Q. Let me try to just make this<br/>23 easy. Do you dispute this? Are you</p> | <p style="text-align: right;">Page 303</p> <p>1 supposed to give it at Tuesday at 5:00?<br/>2 A. Correct.<br/>3 Q. That's what I'm trying to get<br/>4 to, what your position is on this. So<br/>5 then it would be your position that you<br/>6 were not late in providing the<br/>7 information to him?<br/>8 A. Yes.<br/>9 Q. Okay. That's all I wanted to<br/>10 know. I was trying to get to what your<br/>11 position is. On Friday, August the 12th,<br/>12 we know this is true, we've already been<br/>13 over it, they came to the unit, and you<br/>14 had two hundred and thirty-three dollars<br/>15 worth of food items that were either not<br/>16 labeled or discarded, and you were<br/>17 informed you were going to get a<br/>18 counseling because of it?<br/>19 A. What this does not state is<br/>20 that on this date as the counseling<br/>21 states, there were two other managers in<br/>22 the building. I was not even in the<br/>23 building. I entered the building twenty</p> |
| <p style="text-align: right;">Page 302</p> <p>1 saying that you gave the district manager<br/>2 the information by 5:00 on Tuesday every<br/>3 week like you were supposed to?<br/>4 A. My scheduled date wasn't<br/>5 Tuesdays. My schedule date was<br/>6 Wednesday. So the answer is no, because<br/>7 I was new store opening.<br/>8 Q. All right. So you're saying<br/>9 that you don't believe your date was<br/>10 Tuesday?<br/>11 A. No. We all had different<br/>12 days. Mine was different because new<br/>13 store reports were totally different than<br/>14 the standard report.<br/>15 Q. I understand from reading<br/>16 this that you're supposed to have the<br/>17 call apparently on Wednesday, but my<br/>18 question is: According to this document,<br/>19 you were supposed to give the report or<br/>20 information, whatever that means, by<br/>21 Tuesday at 5:00?<br/>22 A. That's incorrect.<br/>23 Q. You're saying you weren't</p>                                                                    | <p style="text-align: right;">Page 304</p> <p>1 minutes, thirty minutes after Rich and<br/>2 immediately had to go to work because<br/>3 they were very busy. At that point he<br/>4 broke off and did his walk-through. I<br/>5 received the counseling as being the<br/>6 general manager there, but the two<br/>7 associate managers on duty were actually<br/>8 documented by Rich for not physically<br/>9 walking the building. I wasn't. I<br/>10 didn't open up the building.<br/>11 Q. I understand that. But<br/>12 basically, as you and I have already<br/>13 discussed, it's your ultimate<br/>14 responsibility that these things are<br/>15 supposed to be done, and what you're<br/>16 telling me is he wrote all of you up?<br/>17 A. Yes.<br/>18 Q. Okay. That's all I'm getting<br/>19 to. We agree that this happened, the<br/>20 12th. We don't dispute that this<br/>21 happened.<br/>22 A. Yes, this happened.<br/>23 Q. And you're ultimately</p>                                    |

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| <p style="text-align: right;">Page 305</p> <p>1 responsible as the general manager, and<br/>2 you all got written up?<br/>3 A. Yes.<br/>4 Q. This next one says, August<br/>5 the 6th, The four general managers in the<br/>6 district that are struggling with their<br/>7 abilities to plan their business, drive<br/>8 sales on a shiftly basis, meaning y'all<br/>9 have shifts, and/or be proactive or<br/>10 reactive to control labor costs were<br/>11 notified to personally call the district<br/>12 manager every day to explain what<br/>13 happened on the previous day if they did<br/>14 not make their daily R goals. So I guess<br/>15 y'all have daily goals?<br/>16 A. They are R. Our new unit is<br/>17 E, but there are daily goals.<br/>18 Q. Okay. So you are --<br/>19 A. New unit E.<br/>20 Q. You're E. And so I guess<br/>21 that's what you told him, I didn't call<br/>22 you because I'm E and not R?<br/>23 A. No. My goals -- we spoke</p>                                                                                                | <p style="text-align: right;">Page 307</p> <p>1 to him every day?<br/>2 A. That's correct.<br/>3 Q. Okay. Lack of preparedness,<br/>4 not meeting requirement deadlines, lack<br/>5 of follow through.<br/>6 August the 18th, one of your<br/>7 associate managers left a voicemail<br/>8 explaining why labor was over on the<br/>9 17th. Did that happen?<br/>10 A. I don't know.<br/>11 Q. Okay. August the 6th y'all<br/>12 had a district -- the district manager<br/>13 was informed by another associate manager<br/>14 that somebody used the F word. The<br/>15 district manager spoke with you and told<br/>16 you to start an open door investigation.<br/>17 Did you do that?<br/>18 A. I don't know if it was the<br/>19 6th. There was an incident where Rich<br/>20 said that someone had used the F -- that<br/>21 someone approached him about using the F<br/>22 word, and he did want me to look into<br/>23 it. Yes, I did do that.</p> |
| <p style="text-align: right;">Page 306</p> <p>1 every day because the labor was not in<br/>2 order because the labor was not in order<br/>3 because we had to transport people from<br/>4 Florence, Alabama, other restaurants<br/>5 where we pay for their travel and we pay<br/>6 them -- we paid the 213 server eight<br/>7 dollars an hour. So he was already aware<br/>8 of our E because he coordinated their<br/>9 arrival. He coordinated their salaries.<br/>10 He coordinated that on a daily basis. So<br/>11 he was informed. He knew about that<br/>12 every day. That was his coordination.<br/>13 Q. Well, are you saying that<br/>14 because he knew, you didn't have to call<br/>15 in like he told you to?<br/>16 A. No. I'm saying we spoke<br/>17 every single day because of the cost of<br/>18 bringing others in.<br/>19 Q. All right. So you spoke to<br/>20 him about labor costs every day, and he<br/>21 says you did not call him even though<br/>22 your unit continues to miss your goal.<br/>23 And you say that's not true. You talked</p> | <p style="text-align: right;">Page 308</p> <p>1 Q. Did you take any written<br/>2 statements from anybody?<br/>3 A. Yes.<br/>4 Q. All right. Who did you take<br/>5 written statements from?<br/>6 A. The initial -- it was<br/>7 initiated to Rich, so there was three<br/>8 bodies involved in the office. He had<br/>9 already spoke to one, so I only spoke<br/>10 with Ashley Moore and Carlos.<br/>11 Q. Did you take statements from<br/>12 them, written statements?<br/>13 A. Yes.<br/>14 Q. When did you send them to the<br/>15 district manager?<br/>16 A. I don't recollect exactly<br/>17 when they were sent out.<br/>18 Q. All right. So according to<br/>19 this, it could be that you hadn't sent<br/>20 them as of the 25th, but you may have<br/>21 sent them subsequent to that? You just<br/>22 don't know one way or the other?<br/>23 A. The 25th of?</p>                                                                           |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 309</p> <p>1 Q. August. All this says is</p> <p>2 that as of the morning of 25th you hadn't</p> <p>3 sent the statement. But you're saying</p> <p>4 you believe you did do the statements but</p> <p>5 you don't know when?</p> <p>6 A. Those statements were not</p> <p>7 supposed to go to Rich. Those statements</p> <p>8 were supposed to go to Kelly Barnes.</p> <p>9 Q. Okay. Did you ever send them</p> <p>10 to Kelly Barnes?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know the date upon</p> <p>13 which you sent them?</p> <p>14 A. No.</p> <p>15 Q. So it could be that you sent</p> <p>16 them but you sent them sometime after</p> <p>17 August 25th? We just don't know?</p> <p>18 A. They were sent, because he</p> <p>19 asked me about them prior to this, and I</p> <p>20 told him that they were already gone. We</p> <p>21 had a conversation prior to this paper.</p> <p>22 Q. But you don't know the date</p> <p>23 you sent them?</p> | <p style="text-align: right;">Page 311</p> <p>1 Q. Mr. Alexander. Excuse me.</p> <p>2 A. On the 17th?</p> <p>3 Q. Yeah, that's what it says.</p> <p>4 August 17th or a day or two thereafter?</p> <p>5 A. I'm sorry.</p> <p>6 Q. Do you recollect this event?</p> <p>7 A. Yes.</p> <p>8 Q. All right. So you recollect</p> <p>9 discussing it with Mr. Alexander about</p> <p>10 the schedule?</p> <p>11 A. That sales building day, yes.</p> <p>12 Q. And do you recollect that</p> <p>13 there was a problem with the schedule?</p> <p>14 A. I didn't have sales</p> <p>15 building. I was not physically on the</p> <p>16 conference with him and James Heiter who</p> <p>17 was the scheduling manager. We're</p> <p>18 required to have one or the other on that</p> <p>19 meeting, and I was actually relocating</p> <p>20 from Birmingham to Montgomery that day.</p> <p>21 Q. On August the 17th?</p> <p>22 A. Yes. I stayed in a hotel</p> <p>23 because it was very -- I moved rather</p> |
| <p style="text-align: right;">Page 310</p> <p>1 A. Correct.</p> <p>2 Q. Okay. Then you had another</p> <p>3 one of those sales building day meetings</p> <p>4 on August 17th and there was a issue</p> <p>5 about not getting your required</p> <p>6 information and the staffing worksheet</p> <p>7 and schedules were messed up. And it</p> <p>8 says there were too many instances of too</p> <p>9 many employees or too few employees</p> <p>10 scheduled during parts of the day. And</p> <p>11 you said this is the scheduling manager's</p> <p>12 problem?</p> <p>13 A. No.</p> <p>14 Q. Who was the scheduling</p> <p>15 manager?</p> <p>16 A. James Heiter.</p> <p>17 Q. Is that the same person as</p> <p>18 Tony?</p> <p>19 A. Yes.</p> <p>20 Q. All right. Did you or did</p> <p>21 you not discuss this with Mr. Rodgers on</p> <p>22 August 17th?</p> <p>23 A. Mr. Alexander?</p>                                                                                              | <p style="text-align: right;">Page 312</p> <p>1 quickly, and they had me to go into a</p> <p>2 hotel and then relocate my possessions</p> <p>3 later.</p> <p>4 Q. Is that why you got -- is</p> <p>5 that why you've turned in the U-haul</p> <p>6 receipt?</p> <p>7 A. I believe that is because it</p> <p>8 was to show that I was in the middle of a</p> <p>9 move and no general manager is required</p> <p>10 to be on a sales building call or</p> <p>11 anything when they are in the middle of a</p> <p>12 relocation or on vacation or something.</p> <p>13 That's why we have an associate manager</p> <p>14 responsible for each area.</p> <p>15 Q. All right. Do you agree that</p> <p>16 the manager's schedule is due at the end</p> <p>17 of the month?</p> <p>18 A. It was due prior to the end</p> <p>19 of the month.</p> <p>20 Q. Prior to the end of the</p> <p>21 month?</p> <p>22 A. Yes.</p> <p>23 Q. And do you agree that as of</p>                                        |

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| <p style="text-align: right;">Page 313</p> <p>1 <b>August the 25th, you had not submitted</b><br/> 2 <b>the schedule to Mr. Alexander?</b><br/> 3 A. What this doesn't state is<br/> 4 that one manager quit and they<br/> 5 transferred another manager in and then<br/> 6 that manager left. So the schedule was<br/> 7 actually rewritten during this time frame<br/> 8 about three or four times. The original<br/> 9 schedule was done, but the schedules were<br/> 10 rewritten about three or four times<br/> 11 during this time frame.<br/> 12 <b>Q. All right. So if I</b><br/> 13 <b>understand what you're telling me, you</b><br/> 14 <b>agree that this statement is true, but</b><br/> 15 <b>you say that there is a legitimate reason</b><br/> 16 <b>why it was not done on a timely basis?</b><br/> 17 A. The original schedule was<br/> 18 written timely. The schedule had to be<br/> 19 rewritten three or four times even after<br/> 20 this day.<br/> 21 <b>Q. Well, this says as of August</b><br/> 22 <b>the 25th no manager schedule was</b><br/> 23 <b>submitted?</b></p> | <p style="text-align: right;">Page 315</p> <p>1 A. Yes.<br/> 2 <b>Q. All right. How do you submit</b><br/> 3 <b>those schedules?</b><br/> 4 A. They are e-mailed or faxed.<br/> 5 <b>Q. Okay. On sales building day</b><br/> 6 <b>on the 20th you did not call into the</b><br/> 7 <b>conference. Tony participated in the</b><br/> 8 <b>call. At 8:30 Dwight contacted Mr.</b><br/> 9 <b>Alexander to report you were on the road</b><br/> 10 <b>and could not pick up a signal on the</b><br/> 11 <b>cell phone. Do you remember that event?</b><br/> 12 A. Okay. I'm looking at the<br/> 13 dates. On the date mentioned with the<br/> 14 cell phone is the day that I was<br/> 15 traveling.<br/> 16 <b>Q. Say that again?</b><br/> 17 A. Hold on. You read the dates.<br/> 18 <b>Q. You've told me that August</b><br/> 19 <b>17th you didn't call in because you were</b><br/> 20 <b>moving, and the cell phone day is July</b><br/> 21 <b>the 20th.</b><br/> 22 A. No, ma'am. The 17th is not<br/> 23 mentioning calling in. The 20th -- and</p>                                                                                                                                       |
| <p style="text-align: right;">Page 314</p> <p>1 A. No. The original schedule<br/> 2 was submitted.<br/> 3 <b>Q. All right. So you dispute</b><br/> 4 <b>that?</b><br/> 5 A. Yes.<br/> 6 <b>Q. Well, then why did you tell</b><br/> 7 <b>me all those excuses about it then if you</b><br/> 8 <b>dispute it to begin with? What does that</b><br/> 9 <b>have to do with, which day on here?</b><br/> 10 A. It has to do with them saying<br/> 11 that the original -- as I said, when I<br/> 12 made that comment that the original<br/> 13 schedule was submitted, there was -- and<br/> 14 during that time frame there was a time<br/> 15 when several schedules were written, but<br/> 16 the original schedule was submitted on<br/> 17 time.<br/> 18 <b>Q. Okay. All I'm trying to get</b><br/> 19 <b>to is that this simply says that as of</b><br/> 20 <b>August the 25th, no manager's schedule</b><br/> 21 <b>has been submitted. Regardless of the</b><br/> 22 <b>excuses, my question is: Did you submit</b><br/> 23 <b>the original schedule by August the 25th?</b></p>                | <p style="text-align: right;">Page 316</p> <p>1 when you said didn't call in, the 20th is<br/> 2 mentioned the call-in. That's why I say<br/> 3 I was moving.<br/> 4 <b>Q. You told me you were moving</b><br/> 5 <b>when we were talking about on the 17th</b><br/> 6 <b>when you failed to get the required</b><br/> 7 <b>information of district manager and there</b><br/> 8 <b>was that schedule problem, and this said</b><br/> 9 <b>you placed blame on the scheduling</b><br/> 10 <b>manager, and you said, no, you didn't</b><br/> 11 <b>participate in that because you were</b><br/> 12 <b>moving?</b><br/> 13 A. You said I failed to call in.<br/> 14 <b>Q. You can correct your</b><br/> 15 <b>testimony any way you want to just so I</b><br/> 16 <b>can understand it. So tell me what</b><br/> 17 <b>you're trying to tell me. You told me</b><br/> 18 <b>you were moving as the reason for you not</b><br/> 19 <b>getting that thing on the August 17th.</b><br/> 20 <b>But if you're now saying, no, that's</b><br/> 21 <b>wrong, I mean, that's fine. I just need</b><br/> 22 <b>you to tell me what we're talking about.</b><br/> 23 A. No, ma'am. You said the 17th</p> |

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| <p style="text-align: right;">Page 317</p> <p>1 that I missed the call. I knew the day<br/>2 that I missed the call is the day that I<br/>3 was moving, but it's not the 17th.<br/>4 <b>Q. You've only ever missed one</b><br/>5 <b>call?</b><br/>6 A. Yes, the day that I didn't<br/>7 call in was the 20th when I was moving.<br/>8 <b>Q. Are you saying that's the</b><br/>9 <b>only day that you never called in when</b><br/>10 <b>you were supposed to?</b><br/>11 A. Yes, because my cell phone<br/>12 call -- James Heiter was on the labor<br/>13 call.<br/>14 <b>Q. Okay. So the only day that</b><br/>15 <b>you have not called in like you were</b><br/>16 <b>supposed to now you're telling me is on</b><br/>17 <b>July the 20th?</b><br/>18 A. That's where this is stating<br/>19 about the phone call, yes.<br/>20 <b>Q. And you're further saying as</b><br/>21 <b>your excuse for not doing that is because</b><br/>22 <b>you were moving?</b><br/>23 A. Yes.</p>                                 | <p style="text-align: right;">Page 319</p> <p>1 I'm in the middle of moving and I know<br/>2 James Heiter is on the call, that I<br/>3 didn't expect a call or I didn't make a<br/>4 call because I was in the middle of<br/>5 moving.<br/>6 <b>Q. Let's do this: What is your</b><br/>7 <b>cell phone number during that -- do you</b><br/>8 <b>have the same cell phone number?</b><br/>9 A. I'm not sure. I have two,<br/>10 and I don't know if it's the same one.<br/>11 <b>Q. Well, tell me what the two</b><br/>12 <b>numbers are.</b><br/>13 A. I can only recall one.<br/>14 <b>Q. Well, tell me that one.</b><br/>15 A. It's my home, the same<br/>16 number, 678-██████.<br/>17 <b>Q. But you think on July the</b><br/>18 <b>20th of 2005 you had a different cell</b><br/>19 <b>phone number?</b><br/>20 A. I don't know when I had the<br/>21 different. It's unlimited. That's<br/>22 always been my primary number.<br/>23 <b>Q. Okay. Well, who is your</b></p>                                                  |
| <p style="text-align: right;">Page 318</p> <p>1 <b>Q. Well, then why on here did</b><br/>2 <b>you tell him it was because you were on</b><br/>3 <b>the road and you could not pick up a</b><br/>4 <b>signal on your cell phone?</b><br/>5 A. I was in the truck. My cell<br/>6 phone was with me.<br/>7 <b>Q. Right. Well, didn't you say</b><br/>8 <b>you were moving from Birmingham to</b><br/>9 <b>Montgomery?</b><br/>10 A. Yes.<br/>11 <b>Q. Your cell phone would not</b><br/>12 <b>work anywhere between Birmingham and</b><br/>13 <b>Montgomery?</b><br/>14 A. There was a dead spot, yes.<br/>15 <b>Q. I understand that, but why</b><br/>16 <b>did you wait until 8:30 to call?</b><br/>17 A. Because, one, I wasn't<br/>18 required to be on it from when I was<br/>19 moving, and he said he called me and I<br/>20 had no phone -- no missed calls or<br/>21 anything from where he tried to contact<br/>22 me. And, again, I could not -- I even<br/>23 went as far as to explain to him that if</p> | <p style="text-align: right;">Page 320</p> <p>1 service with?<br/>2 A. Sprint.<br/>3 <b>Q. Sprint. Have you always been</b><br/>4 <b>with Sprint?</b><br/>5 A. For a number of years, yes.<br/>6 <b>Q. Were you with Sprint in 2005?</b><br/>7 A. Yes.<br/>8 <b>Q. Okay. All right. So</b><br/>9 <b>basically on July the 20th we've got two</b><br/>10 <b>explanations. One is you weren't</b><br/>11 <b>supposed to have to call anyway because</b><br/>12 <b>you were moving and, two, your cell phone</b><br/>13 <b>didn't have a signal, correct?</b><br/>14 A. No. That wasn't -- again,<br/>15 that's what he said. But as I explained<br/>16 to him, when I had a conversation with<br/>17 him prior to this was the fact that I was<br/>18 moving and that I had a dead spot,<br/>19 because he said that it was -- and like I<br/>20 said, there is a dead spot between<br/>21 Birmingham and Montgomery. And so that I<br/>22 didn't show a missed call or anything<br/>23 like that that he had tried calling me.</p> |

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| <p style="text-align: right;">Page 321</p> <p>1 So we had a conversation prior to this<br/>2 day, but we didn't dispute or converse on<br/>3 this.<br/>4 <b>Q. When you're saying this day,<br/>5 you're saying prior to the termination?</b><br/>6 <b>A. 9/3, yes.</b><br/>7 <b>Q. Right. I understand that.</b><br/>8 <b>After you didn't call in on the 20th, you<br/>9 and he discussed why you weren't involved<br/>10 in the call, and according to you he<br/>11 says, well, I tried to call you, and you<br/>12 said, well, you were in a dead spot and<br/>13 you didn't have a missed call. That's<br/>14 why that's written up on here. That's<br/>15 what y'all previously had discussed?</b><br/>16 <b>A. Yes.</b><br/>17 <b>Q. And sure enough, on the next<br/>18 page it says that y'all have spoken about<br/>19 these matters. Then on July the 28th you<br/>20 were supposed to e-mail a structured<br/>21 day-by-day outline of your workday so he<br/>22 could help you with planning. Did you<br/>23 ever do that?</b></p> | <p style="text-align: right;">Page 323</p> <p>1 the regional vice-president, that<br/>2 vacations had been frozen. I, in turn,<br/>3 passed that information on to Ashley that<br/>4 she had to wait before she can go on<br/>5 vacation because of the voicemail that<br/>6 came out from Ron Phillips. Weeks later<br/>7 Ashley asked when would be a good time<br/>8 for her to go on vacation. At that time<br/>9 we found out that because of the fact<br/>10 that we had five managers, that Ashley<br/>11 could have went on vacation, but that<br/>12 wasn't Ron Phillips' instructions. His<br/>13 instructions from the regional was that<br/>14 no vacations were to be taken during that<br/>15 time frame. So she was actually told<br/>16 that she could take the vacation once we<br/>17 found out it did not include the new<br/>18 store, but her mother and father chose to<br/>19 do something differently, and she didn't<br/>20 take it.<br/>21 <b>Q. So to the best of your<br/>22 recollection, she never went on the<br/>23 vacation?</b></p> |
| <p style="text-align: right;">Page 322</p> <p>1 <b>A. It wasn't an e-mail. It was,<br/>2 in fact, a calendar that we received<br/>3 prior.</b><br/>4 <b>Q. When you say we received?</b><br/>5 <b>A. It was a manager's meeting<br/>6 and they gave us planning calendars and<br/>7 we were to fill out this calendar and fax<br/>8 it in.</b><br/>9 <b>Q. Did you do that?</b><br/>10 <b>A. Yes.</b><br/>11 <b>Q. Were you late to work on<br/>12 August the 6th? Do you know one way or<br/>13 the other?</b><br/>14 <b>A. No.</b><br/>15 <b>Q. Okay. Now, what about this<br/>16 last thing? Why did you tell your<br/>17 associate manager that the district<br/>18 manager had frozen all vacation requests<br/>19 due to the district being short of<br/>20 managers?</b><br/>21 <b>A. I informed -- it was actually<br/>22 Ashley that wanted to go on vacation.<br/>23 There was a voicemail from Ron Phillips,</b></p>                                                                                                                  | <p style="text-align: right;">Page 324</p> <p>1 <b>A. She did. She didn't go for<br/>2 that particular day she asked.</b><br/>3 <b>Q. Okay. After you are given<br/>4 your termination and you leave, did you<br/>5 call anybody at the home office, Ron<br/>6 Phillips, or anybody after that?</b><br/>7 <b>A. I don't recall.</b><br/>8 <b>Q. Okay. And then we've already<br/>9 briefly talked about this, but you,<br/>10 thereafter -- you can't remember when,<br/>11 but you found a lawyer, correct?</b><br/>12 <b>A. Yes.</b><br/>13 <b>Q. Now, this EEOC charge is<br/>14 dated September the 8th, 2005, correct?</b><br/>15 <b>A. I have to see the -- yes.</b><br/>16 <b>Q. And that's your signature on<br/>17 here?</b><br/>18 <b>A. Yes.</b><br/>19 <b>Q. Did you have a lawyer when<br/>20 you went to see the EEOC?</b><br/>21 <b>A. No.</b><br/>22 <b>Q. All right. Who typed this up<br/>23 for you, the EEOC?</b></p>                                                                                                                             |

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| Page 325                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 327                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| <p>1 A. Yes.</p> <p>2 Q. So this is based on what you</p> <p>3 told them that day?</p> <p>4 A. This is a very brief</p> <p>5 description of about two hours worth of</p> <p>6 conversation.</p> <p>7 Q. Do you remember who you met</p> <p>8 with?</p> <p>9 A. Serena Curry.</p> <p>10 Q. Was she the first person that</p> <p>11 you met with?</p> <p>12 A. No. I think she was the --</p> <p>13 no. There was actually two people.</p> <p>14 Serena was the second person.</p> <p>15 Q. Byrdsong?</p> <p>16 A. I don't know the name of the</p> <p>17 first person.</p> <p>18 Q. I have here a document,</p> <p>19 handwritten notes that are called intake</p> <p>20 notes that y'all produced to us from L.J.</p> <p>21 Byrdsong, B-y-r-d-s-o-n-g, which purports</p> <p>22 to be notes that were taken, I believe,</p> <p>23 when you went to the EEOC?</p>                           | <p>1 (Whereupon, a discussion off</p> <p>2 the record was held.).</p> <p>3 Q. Anyway, this is the notes</p> <p>4 that you gave the investigator, I guess,</p> <p>5 so let's look at them and see if you</p> <p>6 agree that this is what you told her,</p> <p>7 what she wrote down. That don't all</p> <p>8 blacks bury their people on the weekends,</p> <p>9 and that you supervised Tommy. So that's</p> <p>10 what she said you told her, correct? And</p> <p>11 that you called HR and spoke to Vonn</p> <p>12 Barr, who is a black female, employee</p> <p>13 relations specialist.</p> <p>14 A. I don't know all that part,</p> <p>15 whether she's a black female or not. But</p> <p>16 I did speak with Vonn Barr, yes.</p> <p>17 Q. Well, just read this. I see</p> <p>18 that you're reading it. This is what she</p> <p>19 wrote down that you told her when you</p> <p>20 came to the EEOC.</p> <p>21 A. This is notes from that day,</p> <p>22 yes.</p> <p>23 Q. Okay. All right. So based</p> |
| Page 326                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page 328                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>1 A. I don't know. I wasn't able</p> <p>2 to see those notes.</p> <p>3 Q. Well, here, let me show you</p> <p>4 what I'm marking as Exhibit 9.</p> <p>5 (Whereupon, Defendant's</p> <p>6 Exhibit No. 9 was marked for</p> <p>7 identification and copy of same is</p> <p>8 attached hereto.)</p> <p>9 Q. Okay. Tommy Patterson,</p> <p>10 associate manager, stated to PCP.</p> <p>11 MS. BUSBY: Potential</p> <p>12 charging party? Is that what that stands</p> <p>13 for? Does anybody know? I think that's</p> <p>14 what that stands for. Is that what y'all</p> <p>15 think?</p> <p>16 MS. YORK: I think so.</p> <p>17 Q. That on the preceding</p> <p>18 Wednesday -- okay. So this helps us a</p> <p>19 little bit.</p> <p>20 Where did that calendar go?</p> <p>21 I'm just trying to help us get the date</p> <p>22 straight if we can ever work this thing</p> <p>23 out.</p> | <p>1 on these notes, the two of you put</p> <p>2 together the EEOC charge that we marked</p> <p>3 as Exhibit 8 -- or what is the exhibit on</p> <p>4 the charge? You have it in front of you.</p> <p>5 A. 5.</p> <p>6 Q. Exhibit 5; is that correct?</p> <p>7 You go in, you met with her to your</p> <p>8 recollection a couple of hours? She</p> <p>9 writes down all these notes that you tell</p> <p>10 her, which we've marked as Exhibit 9,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And then thereafter, I guess,</p> <p>14 she types up for you to sign the charge</p> <p>15 that you're making which is reflected in</p> <p>16 Exhibit 5?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Anything else happen</p> <p>19 on that day? Did you talk to anybody</p> <p>20 else or do anything else?</p> <p>21 A. No.</p> <p>22 Q. The only thing else I have,</p> <p>23 before you say no, there is one other</p>                                                                                        |

## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 329</p> <p>1 thing. I guess you filled out this<br/>2 questionnaire that I'm going to mark as<br/>3 Exhibit 10. Let me give you a copy of<br/>4 that.<br/>5 (Whereupon, Defendant's<br/>6 Exhibit No. 10 was marked for<br/>7 identification and copy of same is<br/>8 attached hereto.)<br/>9 A. This was at EEOC.<br/>10 Q. So all of that was at the<br/>11 EEOC, right?<br/>12 A. Yes.<br/>13 Q. Exhibit 9 and Exhibit 10. So<br/>14 you go in there, and I guess you fill out<br/>15 Exhibit 10, the questionnaire first,<br/>16 correct?<br/>17 A. Yes.<br/>18 Q. And then who is Samuel<br/>19 Dunbar?<br/>20 A. Just a friend.<br/>21 Q. Okay. And you handwrite out<br/>22 your synopsis of what you're there about?<br/>23 A. Yes.</p>                                                                          | <p style="text-align: right;">Page 331</p> <p>1 things?<br/>2 A. Yes.<br/>3 Q. All right. Well, what did<br/>4 she ask you to do?<br/>5 A. She asked for witnesses,<br/>6 names and telephone numbers, and she<br/>7 asked for if I could get addresses of<br/>8 those people, and then she said she would<br/>9 contact me again.<br/>10 Q. Okay. Whose names did you<br/>11 give her?<br/>12 A. I gave her several. I don't<br/>13 recall. I gave her several names. I<br/>14 don't recall every name that I gave her.<br/>15 Q. Okay. Well, on your intake<br/>16 sheet, you say Penny Schmidt heard the<br/>17 thing and that Linda -- I can't really<br/>18 read your writing. I'm sorry. Osborne<br/>19 or Ogborne?<br/>20 A. Ogborne, yes.<br/>21 Q. Charlotte Johnson and Shauna<br/>22 Ray were the people that you have listed<br/>23 as witnesses; is that correct?</p>                                                         |
| <p style="text-align: right;">Page 330</p> <p>1 Q. And then after you write out<br/>2 your synopsis, I guess you then go in and<br/>3 meet with Ms. Byrdsong, and she asked you<br/>4 questions about it?<br/>5 A. Yes.<br/>6 Q. And those are the intake<br/>7 notes that you and I have reviewed, which<br/>8 is Exhibit 9, correct?<br/>9 A. Yes.<br/>10 Q. And then thereafter she types<br/>11 up the EEOC charge which is Exhibit 5?<br/>12 A. Yes.<br/>13 Q. And then it's assigned to<br/>14 Serena Curry to investigate?<br/>15 A. Yes.<br/>16 Q. And that's the name you gave<br/>17 me?<br/>18 A. Yes.<br/>19 Q. Tell me what you did as part<br/>20 of the investigation with Serena Curry.<br/>21 Did she ask you to get any witnesses or<br/>22 provide any witness statements or provide<br/>23 any documentation or any of those kind of</p> | <p style="text-align: right;">Page 332</p> <p>1 A. Yes.<br/>2 Q. Did you give her any other<br/>3 names other than those four?<br/>4 A. I don't recall from phone<br/>5 conversation or -- because she called me<br/>6 numerous of times to ask for information<br/>7 and stuff like that. So I don't recall.<br/>8 Q. Okay. Also you listed who<br/>9 are some people that you think were<br/>10 treated more favorably than you. And you<br/>11 listed a person named Greg Waters. Who<br/>12 is that person?<br/>13 A. He was a general manager<br/>14 under Rich's district.<br/>15 Q. For which store?<br/>16 A. I don't remember exactly<br/>17 which store.<br/>18 Q. Why did you think he was<br/>19 treated more favorably than you? I mean,<br/>20 do you know anything specific about him?<br/>21 A. I didn't know a specific<br/>22 date, but I do know that he missed the<br/>23 meeting and we were just told, you know,</p> |

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| <p style="text-align: right;">Page 333</p> <p>1 make sure you're on time and, you know,<br/>2 these things have got to be taken care<br/>3 of. But that it was very nonchalant and<br/>4 nothing where I had conversation with<br/>5 Greg. And the reason why I say I thought<br/>6 I was treated differently is I asked him<br/>7 if he was documented for missing the<br/>8 meeting and Greg told me no.<br/>9 <b>Q. When was this conversation,</b><br/>10 <b>before or after you were terminated?</b><br/>11 A. Before.<br/>12 <b>Q. Okay. So you don't know of</b><br/>13 <b>anything specific -- you don't know</b><br/>14 <b>whether he's been documented for anything</b><br/>15 <b>or not one way or the other?</b><br/>16 A. Just that he said no.<br/>17 <b>Q. On that one incident that</b><br/>18 <b>you're referring to?</b><br/>19 A. Yes.<br/>20 <b>Q. What about this Kevin</b><br/>21 <b>person?</b><br/>22 A. He's also general manager in<br/>23 Rich's district.</p>                          | <p style="text-align: right;">Page 335</p> <p>1 myself who have been general managers a<br/>2 lot longer, and they've had or were going<br/>3 through food cost and labor issues and<br/>4 they are still employed.<br/>5 <b>Q. Let me ask a better question.</b><br/>6 A. Yes.<br/>7 <b>Q. Do you know anything</b><br/>8 <b>specifically about food cost or labor</b><br/>9 <b>issues that any of these people you've</b><br/>10 <b>listed were going through or just your --</b><br/>11 A. That they were missing food<br/>12 cost.<br/>13 <b>Q. And how do you know that or</b><br/>14 <b>why do you believe that?</b><br/>15 A. We received a report every<br/>16 month, and it divides it into districts<br/>17 and it shows the ones that are making<br/>18 food and the ones that are missing food,<br/>19 and you can also go back and pull up the<br/>20 prior years' numbers. And --<br/>21 <b>Q. Well, do you know one way or</b><br/>22 <b>the other if any of them were counseled,</b><br/>23 <b>coached, or written up about it?</b></p> |
| <p style="text-align: right;">Page 334</p> <p>1 <b>Q. Do you know anything about</b><br/>2 <b>him?</b><br/>3 A. No.<br/>4 <b>Q. Well, basically you're just</b><br/>5 <b>writing down the why?</b><br/>6 A. No, these were -- what do you<br/>7 mean when you ask do you know anything<br/>8 about him?<br/>9 <b>Q. Well, you say that you think</b><br/>10 <b>they are treated more favorably than you,</b><br/>11 <b>and I'm asking you do you know anything</b><br/>12 <b>-- is there any specific incident that</b><br/>13 <b>you're referring to? Greg, you said you</b><br/>14 <b>think he was late for a meeting and</b><br/>15 <b>didn't get written up. Kevin, who you</b><br/>16 <b>don't know his last name, is there any</b><br/>17 <b>specific incident you're referring to?</b><br/>18 A. Yes.<br/>19 <b>Q. All right. What is his</b><br/>20 <b>incident?</b><br/>21 A. Actually under -- all of<br/>22 these it's under Rich's district. There<br/>23 were issues of, one, they were senior to</p> | <p style="text-align: right;">Page 336</p> <p>1 A. No.<br/>2 <b>Q. You don't know?</b><br/>3 A. Right.<br/>4 <b>Q. So you just wrote it down</b><br/>5 <b>because you thought, well, I know that</b><br/>6 <b>they've missed food cost, so they may</b><br/>7 <b>have been treated differently?</b><br/>8 A. That, and, again, with<br/>9 general managers did not -- it wasn't --<br/>10 anything can happen between the time you<br/>11 schedule yourself to come in. A general<br/>12 manager may come in an hour or two by<br/>13 going past the chambers, by picking up<br/>14 something for the store or something, and<br/>15 they normally are not documented for<br/>16 twenty-minute tardiness or thirty-minute<br/>17 tardiness. And that was one of the<br/>18 reasons that I wrote their names. Kathy<br/>19 was --<br/>20 <b>Q. Well, no. Wait a minute.</b><br/>21 <b>Are you saying you know for sure none of</b><br/>22 <b>them have ever been documented for</b><br/>23 <b>tardiness?</b></p>                                         |

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| <p style="text-align: right;">Page 337</p> <p>1 A. I don't know if all of them<br/>2 was. But there was an incident, and I<br/>3 asked questions is the reason why I wrote<br/>4 their names. Just like with Greg, I knew<br/>5 that Greg was not documented for missing<br/>6 a meeting.<br/>7 <b>Q. Well, who was not documented<br/>8 for being tardy?</b><br/>9 A. That would be Kevin.<br/>10 <b>Q. Okay. When was he tardy?</b><br/>11 A. I can't give you a specific<br/>12 date. It was just a conversation between<br/>13 he and I.<br/>14 <b>Q. How about Kathy?</b><br/>15 A. Kathy's name is there. She<br/>16 had the same incident where Rich went<br/>17 into her store, found product, tossed it<br/>18 out. The way he had it set up is if he<br/>19 come in and that happens, you have to<br/>20 send out a voicemail to the other -- the<br/>21 manager on duty must send out a voicemail<br/>22 saying Rich came in today; this is what<br/>23 happened; and this is what we're going to</p>         | <p style="text-align: right;">Page 339</p> <p>1 A. Yes.<br/>2 <b>Q. Okay. Now, the EEOC did an<br/>3 investigation, correct?</b><br/>4 A. Yes.<br/>5 <b>Q. And what was their finding?</b><br/>6 A. Do I have the paper? I don't<br/>7 have the paper. They gave me a letter.<br/>8 I don't recall their exact words on it.<br/>9 <b>Q. Well, what I have is -- I'll<br/>10 show you what I have as Exhibit 11. Did<br/>11 you receive that document?</b><br/>12 <b>(Whereupon, Defendant's<br/>13 Exhibit No. 11 was marked for<br/>14 identification and copy of same is<br/>15 attached hereto.)</b><br/>16 A. Yes.<br/>17 <b>Q. Was there a separate letter<br/>18 that came with it or just this document?</b><br/>19 A. There were more papers that<br/>20 came with this.<br/>21 <b>Q. Okay. Do you remember what<br/>22 they were?</b><br/>23 A. I think it was just an</p>                           |
| <p style="text-align: right;">Page 338</p> <p>1 do to make sure it doesn't happen again.<br/>2 But for my restaurant, the voicemail did<br/>3 not have to take place. Kathy was<br/>4 actually the manager on duty when this<br/>5 happened, because she left the voicemail,<br/>6 and she's a general manager for Rich.<br/>7 And I asked her if she was documented for<br/>8 that, and she said, no, she just had to<br/>9 leave a voicemail. So that's why I put<br/>10 her name on here.<br/>11 <b>Q. Do you know her last name?</b><br/>12 A. No. I know she was out of<br/>13 Pelham.<br/>14 <b>Q. Okay. How about Don?</b><br/>15 A. I don't remember why.<br/>16 <b>Q. Okay. So these three things,<br/>17 your questionnaire, the notes, and the<br/>18 charge, that's what you gave to the EEOC?</b><br/>19 A. Well, I gave them --<br/>20 <b>Q. Or were the documents on the<br/>21 first day you went? Those three<br/>22 documents contain what you told the EEOC<br/>23 when you made your charge?</b></p> | <p style="text-align: right;">Page 340</p> <p>1 explanation of this document.<br/>2 <b>Q. Do you remember what it said?</b><br/>3 A. No, I don't.<br/>4 <b>Q. Do you still have a copy of<br/>5 it?</b><br/>6 A. I don't think I do.<br/>7 <b>Q. Will you check?</b><br/>8 A. Yes.<br/>9 <b>Q. Okay. This document says<br/>10 that they've made the following<br/>11 determination, that they were unable to<br/>12 conclude that the information established<br/>13 a violation of the statute. Is that what<br/>14 you understood, that they had<br/>15 investigated it and they were unable to<br/>16 conclude that Cracker Barrel had violated<br/>17 any of the statutes?</b><br/>18 A. No. That's not how Ms. Curry<br/>19 explained it to me.<br/>20 <b>Q. All right. Well, what did<br/>21 she tell you?</b><br/>22 A. And, again, this is a single<br/>23 page, but there's more pages, because</p> |

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| <p style="text-align: right;">Page 341</p> <p>1 there are different -- this says Page 3,<br/>2 but there are more pages that go along<br/>3 with this that was explaining to me more<br/>4 about this form.<br/>5 <b>Q. Well, let me see if y'all</b><br/>6 <b>produced it.</b><br/>7 MS. BUSBY: I don't have a<br/>8 letter. Do y'all have a letter?<br/>9 MS. YORK: I don't remember<br/>10 if we actually got it or if he got it and<br/>11 sent it to us. I don't know if we got<br/>12 the full --<br/>13 MS. BUSBY: Thing or not?<br/>14 MS. YORK: Yeah, I don't<br/>15 recall.<br/>16 MS. BUSBY: Somewhere in the<br/>17 middle of all this I know y'all became<br/>18 involved and they contacted y'all, but I<br/>19 can't tell who -- I think they mailed it<br/>20 to him. It has his address on it. The<br/>21 only thing I have is just the instruction<br/>22 sheet, you know, which --<br/>23 THE WITNESS: May I see it?</p> | <p style="text-align: right;">Page 343</p> <p>1 <b>Q. All right. So she called you</b><br/>2 <b>and told you what her determination was</b><br/>3 <b>going to be?</b><br/>4 A. No. She just called me and<br/>5 told me that she was calling to confirm<br/>6 my telephone number and my address and<br/>7 that I would be receiving documentation<br/>8 in the mail.<br/>9 <b>Q. That's all she said to you?</b><br/>10 A. Yes.<br/>11 <b>Q. Well, I go back to my</b><br/>12 <b>original question. I mean, you agree</b><br/>13 <b>that her notice tells you that the EEOC</b><br/>14 <b>issues the following determination. It's</b><br/>15 <b>where the check mark is.</b><br/>16 A. Okay.<br/>17 <b>Q. That they were unable to</b><br/>18 <b>conclude that the information obtained</b><br/>19 <b>establishes a violation of the statute.</b><br/>20 A. Okay.<br/>21 <b>Q. I mean, you understood that</b><br/>22 <b>meant that they couldn't find a</b><br/>23 <b>violation, and they weren't going to</b></p> |
| <p style="text-align: right;">Page 342</p> <p>1 MS. BUSBY: Sure. And the<br/>2 Dismissal and Notice of Rights. Y'all<br/>3 did not produce a letter to us. So if<br/>4 you received a letter --<br/>5 THE WITNESS: No. This is<br/>6 the forms that came along with that<br/>7 (indicating).<br/>8 <b>Q. (By Ms. Busby) Okay. So</b><br/>9 <b>let's look at this. Along with your</b><br/>10 <b>dismissal and notice of rights which we</b><br/>11 <b>marked as Exhibit --</b><br/>12 A. 11.<br/>13 <b>Q. -- 11, you got the</b><br/>14 <b>information sheet, correct?</b><br/>15 A. Yes.<br/>16 <b>Q. Not a written letter from Ms.</b><br/>17 <b>Curry?</b><br/>18 A. Correct.<br/>19 <b>Q. Okay. But did you talk to</b><br/>20 <b>Ms. Curry after you received your</b><br/>21 <b>dismissal?</b><br/>22 A. I talked to her before I<br/>23 received the dismissal.</p>                                                                  | <p style="text-align: right;">Page 344</p> <p>1 <b>proceed, but you could file a lawsuit,</b><br/>2 <b>correct?</b><br/>3 A. No.<br/>4 <b>Q. You did not understand that?</b><br/>5 A. No. It also continues on<br/>6 that this does not certify that the<br/>7 respondent is in compliance with the<br/>8 statutes.<br/>9 <b>Q. I know. I see what was being</b><br/>10 <b>pointed out to you, but that's not my</b><br/>11 <b>question. My question is that the</b><br/>12 <b>finding of the EEOC is that they were</b><br/>13 <b>unable to conclude that the information</b><br/>14 <b>obtained established a violation of the</b><br/>15 <b>statute.</b><br/>16 MS. YORK: He asked and<br/>17 answered that. And he just wanted to<br/>18 clarify what he sees in front of him.<br/>19 MS. BUSBY: You can come back<br/>20 and ask him any question or point out<br/>21 anything you want to. I don't care. I<br/>22 just want to make sure that he<br/>23 understands what the EEOC's finding was.</p>           |

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# FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 345</p> <p>1 MS. YORK: And he was stating<br/>2 what he saw.<br/>3 Q. (By Ms. Busby) Do you agree<br/>4 that the EEOC did not find a violation of<br/>5 the statute?<br/>6 A. I don't agree with that. I<br/>7 read that, yes.<br/>8 Q. Okay. Now, let me show you<br/>9 what I'm going to mark as Exhibit 12.<br/>10 These are your initial disclosures. Did<br/>11 you participate in drafting those initial<br/>12 disclosures?<br/>13 (Whereupon, Defendant's<br/>14 Exhibit No. 12 was marked for<br/>15 identification and copy of same is<br/>16 attached hereto.)<br/>17 A. Yes.<br/>18 Q. Okay. Do you recollect from<br/>19 looking at it which part you did?<br/>20 A. I don't understand what you<br/>21 mean what part I did.<br/>22 Q. Which part you drafted or<br/>23 participated in?</p>                                    | <p style="text-align: right;">Page 347</p> <p>1 Tuesday?<br/>2 A. Manager.<br/>3 Q. Which store? Is it just for<br/>4 one location?<br/>5 A. Yes.<br/>6 Q. Which store?<br/>7 A. Panola Road.<br/>8 Q. Have you been at that one<br/>9 since you were employed by them?<br/>10 A. No.<br/>11 Q. When were you first employed<br/>12 by Ruby Tuesday?<br/>13 A. October of last year.<br/>14 Q. Okay. What's your rate of<br/>15 pay?<br/>16 A. It changed. I think it's<br/>17 fifty-four five.<br/>18 Q. Was that for 2006?<br/>19 A. Yes.<br/>20 Q. Do you know what it will be<br/>21 for 2007?<br/>22 A. I'm not eligible for an<br/>23 increase.</p>                                                                         |
| <p style="text-align: right;">Page 346</p> <p>1 MS. YORK: I'm going to<br/>2 object. Mr. Rodgers did not draft a<br/>3 pleading.<br/>4 MS. BUSBY: Well, I asked him<br/>5 if he participated and put it together,<br/>6 and he said yes.<br/>7 MS. YORK: But he didn't<br/>8 draft. You said did he draft it. He did<br/>9 not draft the pleading.<br/>10 Q. Which part did you<br/>11 participate in? All right. Three and --<br/>12 A. This is -- this is one of my<br/>13 attorney documents.<br/>14 Q. Well, the only reason I'm<br/>15 asking you any questions is because you<br/>16 said, yes, you participated in it. I<br/>17 don't know if you did or not.<br/>18 A. No, ma'am, I didn't<br/>19 participate in this document.<br/>20 Q. Okay. Fair enough. All<br/>21 right. Where are you employed now?<br/>22 A. Ruby Tuesday.<br/>23 Q. What's your job at Ruby</p> | <p style="text-align: right;">Page 348</p> <p>1 Q. Okay. Are you eligible for<br/>2 any bonuses?<br/>3 A. No.<br/>4 Q. Why are you not eligible for<br/>5 an increase?<br/>6 A. For the position that I'm in,<br/>7 I would have to be promoted in order to<br/>8 get an increase.<br/>9 Q. Have you had any evaluations<br/>10 since you've been employed?<br/>11 A. Yes.<br/>12 Q. What did they say?<br/>13 A. What do you mean?<br/>14 Q. Well, have they been good,<br/>15 medium, bad?<br/>16 A. They've been good<br/>17 evaluations.<br/>18 Q. Have you had any disciplines?<br/>19 A. No.<br/>20 Q. Have you had any<br/>21 communication problems with any managers?<br/>22 A. No.<br/>23 Q. Do you have a district</p> |

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| <p style="text-align: right;">Page 349</p> <p>1 manager?</p> <p>2 A. Yes.</p> <p>3 Q. Who is your district manager?</p> <p>4 A. Brian -- for Montgomery or</p> <p>5 the new one since I moved here?</p> <p>6 Q. Your current manager.</p> <p>7 A. Christine and I think her</p> <p>8 last name is Lawton. She's brand new.</p> <p>9 Q. Did you start as a district</p> <p>10 manager in Montgomery at a Ruby Tuesday?</p> <p>11 A. As a manager, not a district</p> <p>12 manager.</p> <p>13 Q. At which location?</p> <p>14 A. Wetumpka, Alabama.</p> <p>15 Q. And how long were you at that</p> <p>16 location?</p> <p>17 A. That was just for training.</p> <p>18 And nine weeks.</p> <p>19 Q. And then where did you go?</p> <p>20 A. Montgomery, the Atlanta</p> <p>21 Highway store.</p> <p>22 Q. How long were you there?</p> <p>23 A. Six months.</p>                                              | <p style="text-align: right;">Page 351</p> <p>1 A. Yes.</p> <p>2 Q. At which location?</p> <p>3 A. Panola Road.</p> <p>4 Q. So how long have you been</p> <p>5 there?</p> <p>6 A. Since January of this year.</p> <p>7 Q. When you applied at Ruby</p> <p>8 Tuesday, did you tell them you had been</p> <p>9 terminated from Cracker Barrel?</p> <p>10 A. Yes.</p> <p>11 Q. Who did you tell?</p> <p>12 A. James Aubey who was the</p> <p>13 district manager for Ruby Tuesday.</p> <p>14 Q. Okay. Did you put it on your</p> <p>15 application?</p> <p>16 A. Yes.</p> <p>17 Q. What was the reason that you</p> <p>18 gave them for your termination?</p> <p>19 A. I don't know if I wrote it on</p> <p>20 the application or if I told them.</p> <p>21 Q. Just however you gave it to</p> <p>22 them. How did you tell them? What</p> <p>23 reason did you give them?</p>                                                                                                                            |
| <p style="text-align: right;">Page 350</p> <p>1 Q. And then where did you go?</p> <p>2 A. Still at Montgomery but the</p> <p>3 Eastern Boulevard store.</p> <p>4 Q. Why did you change stores?</p> <p>5 A. The Eastern Boulevard store</p> <p>6 needed a general manager. I went to take</p> <p>7 over the Eastern Boulevard store.</p> <p>8 Q. And how long were you at the</p> <p>9 Eastern Boulevard store?</p> <p>10 A. Until December of last year.</p> <p>11 Q. All right. And why did you</p> <p>12 leave?</p> <p>13 A. I relocated to Atlanta.</p> <p>14 Q. But why?</p> <p>15 A. It was by my choice.</p> <p>16 Q. You asked for a relocation?</p> <p>17 A. Yes.</p> <p>18 Q. Why did you want to move back</p> <p>19 to Atlanta?</p> <p>20 A. Friends. I didn't really</p> <p>21 know that many people back there.</p> <p>22 Q. All right. And so was there</p> <p>23 an opening in Atlanta?</p> | <p style="text-align: right;">Page 352</p> <p>1 A. I don't recall the exact</p> <p>2 reason that I gave them.</p> <p>3 Q. Did you tell them you filed</p> <p>4 an EEOC charge?</p> <p>5 A. He was aware of it, yes.</p> <p>6 Q. Was he aware of it because</p> <p>7 you told him or --</p> <p>8 A. No. I told him because I may</p> <p>9 need to take time off to do something,</p> <p>10 and I didn't want it to interfere with my</p> <p>11 current position.</p> <p>12 Q. Okay. As part of your</p> <p>13 production, you have given me a lot of</p> <p>14 written statements which I am not sure</p> <p>15 what the relevance is. You gave me a</p> <p>16 statement about Carlos Browning</p> <p>17 witnessing somebody in the stockroom, in</p> <p>18 the retail stockroom, who was upset. Is</p> <p>19 that relevant to your case?</p> <p>20 A. I need to read the statement</p> <p>21 to tell you.</p> <p>22 Q. I mean, it may be just in</p> <p>23 keeping with you giving everything that</p> |

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| <p style="text-align: right;">Page 353</p> <p>1 you had from your Cracker Barrel days.<br/> 2 I'm just trying to see if it's relevant<br/> 3 to anything.<br/> 4 A. Yes.<br/> 5 Q. Yes to which question? It's<br/> 6 relevant to your case or it's just part<br/> 7 of the documents you had related to<br/> 8 Cracker Barrel?<br/> 9 A. I think it is relevant to the<br/> 10 case.<br/> 11 Q. Okay. Tell me in what<br/> 12 manner.<br/> 13 A. The fact that Rich -- as the<br/> 14 retail manager, Rich was made aware by<br/> 15 another manager that Teresa was using<br/> 16 profane language. She's the retail<br/> 17 manager, Teresa is. And that her<br/> 18 behavior was inappropriate. He reported<br/> 19 it to Rich Alexander that that incident<br/> 20 happened, and when that happened, we were<br/> 21 told not to document her. With Ashley,<br/> 22 they said that she said the F word, and<br/> 23 we were told to be documented.</p>                                                                       | <p style="text-align: right;">Page 355</p> <p>1 A. No.<br/> 2 Q. So did you investigate it?<br/> 3 A. No.<br/> 4 Q. So you don't have any<br/> 5 personal knowledge about it?<br/> 6 A. No. I was told to don't<br/> 7 worry.<br/> 8 Q. Who were you told by?<br/> 9 A. Rich.<br/> 10 Q. All right. And he told you<br/> 11 don't investigate this incident?<br/> 12 A. Yes.<br/> 13 Q. All right. Did Carlos<br/> 14 Browning report this to you?<br/> 15 A. To me, no.<br/> 16 Q. Okay. So the way you found<br/> 17 out about it was how?<br/> 18 A. Through another employee who<br/> 19 told me about it.<br/> 20 Q. Who is that?<br/> 21 A. It was one of the retail<br/> 22 clerks. I don't know which one.<br/> 23 Q. Did they come to you</p>                                                                                                                                                                                                 |
| <p style="text-align: right;">Page 354</p> <p>1 Q. Okay. Hang on a minute. I'm<br/> 2 not sure I understand you. Carlos<br/> 3 reports to you that he hears the retail<br/> 4 manager screaming?<br/> 5 A. He reported to Rich.<br/> 6 Q. Well, then why do you have a<br/> 7 copy of it? I mean, this doesn't say<br/> 8 anything about reporting anything to<br/> 9 Rich. This looks like a statement that<br/> 10 is taken as part of an investigation.<br/> 11 A. I don't know. I can just<br/> 12 tell you what happened in that incident.<br/> 13 I don't know when, where, why, how.<br/> 14 Q. Well, how did you get a copy<br/> 15 of this document?<br/> 16 A. I don't know if it's a part<br/> 17 of me just giving them information to the<br/> 18 EEOC or how the packet came. I just -- I<br/> 19 don't remember how I even got the -- it<br/> 20 was just too many documents for me to say<br/> 21 where that particular one came from. I<br/> 22 remember the incident itself.<br/> 23 Q. Did you witness it?</p> | <p style="text-align: right;">Page 356</p> <p>1 complaining or what happened?<br/> 2 A. No. It was in a general<br/> 3 conversation that they were talking about<br/> 4 in the retail stockroom, and Carlos was<br/> 5 actually talking to the retail clerk when<br/> 6 I came into the stockroom itself.<br/> 7 Q. So you overheard him talking<br/> 8 about it and said what are y'all talking<br/> 9 about?<br/> 10 A. I overheard them talking<br/> 11 about it, yes, just bits and pieces of<br/> 12 it.<br/> 13 Q. You overheard them talking<br/> 14 about what?<br/> 15 A. The comment was made Ashley<br/> 16 got wrote up but Teresa didn't.<br/> 17 Q. Well, I mean, how is it that<br/> 18 -- you don't have anything to do with<br/> 19 retail; is that right?<br/> 20 A. No, I do. But we also have a<br/> 21 retail district manager who was opposite<br/> 22 of Rich Alexander who was responsible for<br/> 23 the retail manager.</p> |

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| <p style="text-align: right;">Page 357</p> <p>1 <b>Q.</b> So whatever investigation<br/>2 goes on in retail, the retail district<br/>3 manager handles?<br/>4 <b>A.</b> They would do the direction,<br/>5 yes.<br/>6 <b>Q.</b> Okay. What about Allison<br/>7 Wakely? Who is that person?<br/>8 <b>A.</b> Shift leader from the<br/>9 Gardendale, Alabama store.<br/>10 <b>Q.</b> All right. Inside your<br/>11 documents there is a statement about --<br/>12 it looks to me to be a guest had a<br/>13 complaint because you ran out of a dinner<br/>14 feature. Does this have any relevance to<br/>15 what we're here about?<br/>16 <b>A.</b> I think it does as to the<br/>17 responses from the guest and how<br/>18 complaints were handled, that they<br/>19 weren't just negligently unattended to<br/>20 and that it wasn't -- that it was someone<br/>21 just walked through the door and<br/>22 something can go wrong and no one does<br/>23 anything to try and fix it.</p>                      | <p style="text-align: right;">Page 359</p> <p>1 you says plaintiff's documents. So what<br/>2 that means is that your lawyer gave it to<br/>3 us, you know, so I assume you gave it to<br/>4 them?<br/>5 <b>A.</b> Okay.<br/>6 <b>MR. BREEDLOVE:</b> Or the EEOC.<br/>7 We have the EEOC file.<br/>8 <b>Q.</b> Well, what I'm utilizing that<br/>9 says plaintiff's documents is what y'all<br/>10 have produced to me. I don't know where<br/>11 you got them. So I guess that would be<br/>12 the best way to put it.<br/>13 <b>A.</b> Okay.<br/>14 <b>Q.</b> So the next thing we've<br/>15 already talked about was what you said<br/>16 was a condolence card thinking of you.<br/>17 They sent flowers?<br/>18 <b>A.</b> It's the reason why -- I had<br/>19 in practice that if there was an employee<br/>20 of our restaurant to be ill, have a baby,<br/>21 or have someone deceased, we would send<br/>22 something to either the hospital or to<br/>23 the funeral. And it would come from</p> |
| <p style="text-align: right;">Page 358</p> <p>1 <b>Q.</b> All right. So May 11th,<br/>2 2005, this is something that occurred at<br/>3 the Gardendale store, a guest complained<br/>4 at Gardendale?<br/>5 <b>A.</b> Yes.<br/>6 <b>Q.</b> Okay. I mean, did you keep a<br/>7 copy of this purposefully?<br/>8 <b>A.</b> I don't know why we -- again,<br/>9 I left from Gardendale, went to Atlanta,<br/>10 and went straight to Alabama. So I don't<br/>11 have the documents that you have.<br/>12 There's just been so many, I don't know.<br/>13 <b>Q.</b> Well, that's what I'm trying<br/>14 to -- you said you submitted so many.<br/>15 You submitted them to your attorneys. I<br/>16 mean, did you not review any of your<br/>17 documents before coming to your<br/>18 deposition today?<br/>19 <b>A.</b> Well, I also gave documents<br/>20 to the EEOC. I don't know what was given<br/>21 to the attorney or what was given to the<br/>22 EEOC.<br/>23 <b>Q.</b> Well, everything I've showed</p> | <p style="text-align: right;">Page 360</p> <p>1 Cracker Barrel. There was a fund for<br/>2 that. Those young ladies found out that<br/>3 they did not -- the management team did<br/>4 not do anything for me, and they<br/>5 physically sent those -- those three<br/>6 ladies physically sent that themselves.<br/>7 <b>Q.</b> Did they send it to your<br/>8 house?<br/>9 <b>A.</b> No. They gave it to me when<br/>10 I came back when I was there.<br/>11 <b>Q.</b> Oh, they just gave you --<br/>12 what was it, flowers?<br/>13 <b>A.</b> It was a flower, yes.<br/>14 <b>Q.</b> So they gave it to you?<br/>15 <b>A.</b> Yes.<br/>16 <b>Q.</b> Okay. All right. You don't<br/>17 know for which funeral it was, right?<br/>18 <b>A.</b> No.<br/>19 <b>Q.</b> Okay. You received and<br/>20 signed for the employee handbook, right?<br/>21 <b>A.</b> When I was MIT, yes.<br/>22 <b>Q.</b> Pardon me?<br/>23 <b>A.</b> When I was MIT, when I first</p>                                           |

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| <p style="text-align: right;">Page 361</p> <p>1 came to the company, yes.</p> <p>2 <b>Q. I have this one here dated</b></p> <p>3 <b>7/9/02. I guess that's when you were in</b></p> <p>4 <b>training?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. Where you received and went</b></p> <p>7 <b>over all the training, the awareness --</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. -- the policies and all</b></p> <p>10 <b>that?</b></p> <p>11 MS. BUSBY: If y'all want to</p> <p>12 take a quick break, I may be almost</p> <p>13 finished. I just want to go through</p> <p>14 these documents and make sure.</p> <p>15 (Whereupon, a brief recess</p> <p>16 was taken.)</p> <p>17 (Whereupon, Defendant's</p> <p>18 Exhibit No. 13 was marked for</p> <p>19 identification and copy of same is</p> <p>20 attached hereto.)</p> <p>21 <b>Q. I'm going to show you what</b></p> <p>22 <b>I've marked as Exhibit 13. That is a</b></p> <p>23 <b>counseling, coaching memorandum to you</b></p>                                                                                         | <p style="text-align: right;">Page 363</p> <p>1 (Whereupon, Defendant's</p> <p>2 Exhibit No. 14 was marked for</p> <p>3 identification and copy of same is</p> <p>4 attached hereto.)</p> <p>5 <b>Q. Okay. I have what I've</b></p> <p>6 <b>marked as Exhibit 14, which is you write</b></p> <p>7 <b>Ron Phillips on -- somewhere in response</b></p> <p>8 <b>to this. I don't see that you date it.</b></p> <p>9 <b>Let me just give it to you and let you</b></p> <p>10 <b>take a look at it.</b></p> <p>11 Okay. Exhibit 13 is, Dwight,</p> <p>12 you receive a coaching, I guess, to put</p> <p>13 the best spin on it or a counseling from</p> <p>14 Rich about certain issues that he is not</p> <p>15 happy about that have gone on in June.</p> <p>16 And y'all meet and discuss it as best I</p> <p>17 can figure out; is that correct?</p> <p>18 A. The -- on this one, I'm not</p> <p>19 sure if we met about it or we -- we</p> <p>20 discussed it because I remember it, but I</p> <p>21 don't know if we met in person or we had</p> <p>22 a conversation about it and then the</p> <p>23 document itself was produced.</p>                                                                                                           |
| <p style="text-align: right;">Page 362</p> <p>1 <b>from Rich Alexander in June about certain</b></p> <p>2 <b>issues; is that right? It's just one</b></p> <p>3 <b>page.</b></p> <p>4 A. Oh, this is the same page.</p> <p>5 (Whereupon, a discussion off</p> <p>6 the record was held.)</p> <p>7 <b>Q. Dated June 17th, 2005, Dwight</b></p> <p>8 <b>from Rich Alexander typing up, you know,</b></p> <p>9 <b>I don't know if you call it counseling,</b></p> <p>10 <b>coaching, concerns that he has. He</b></p> <p>11 <b>wanted to discuss and document concerns</b></p> <p>12 <b>with your actions and behaviors in your</b></p> <p>13 <b>current position as general manager of</b></p> <p>14 <b>Unit 574, Montgomery, right?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. Do you recollect receiving</b></p> <p>17 <b>this?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. All right. Did you respond?</b></p> <p>20 A. I responded to a number of</p> <p>21 them. I just don't remember if this is</p> <p>22 one that I responded to telephonically or</p> <p>23 in writing.</p> | <p style="text-align: right;">Page 364</p> <p>1 <b>Q. All right. Well, let's look</b></p> <p>2 <b>then at Exhibit 14, which is your letter</b></p> <p>3 <b>to Ron. Maybe this will refresh your</b></p> <p>4 <b>recollection. What you say is on June</b></p> <p>5 <b>18th, you and Rich met for a discussion</b></p> <p>6 <b>about concerns he had about your</b></p> <p>7 <b>performance and decisions you made at</b></p> <p>8 <b>Unit 574, Montgomery. And before</b></p> <p>9 <b>continuing the conversation, y'all had a</b></p> <p>10 <b>discussion about your ability. And then</b></p> <p>11 <b>he read to you a list of credibility and</b></p> <p>12 <b>operational issues that you feel were</b></p> <p>13 <b>unwarranted. I take it you're referring</b></p> <p>14 <b>to Exhibit 13 that he gave you that --</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. -- he went over those</b></p> <p>17 <b>concerns, and he gave you the document at</b></p> <p>18 <b>your meeting and y'all went over them?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. You then write Ron Phillips</b></p> <p>21 <b>to talk about concerns, I guess, that you</b></p> <p>22 <b>have about the list and to give your</b></p> <p>23 <b>explanation of those concerns?</b></p> |

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## FREEDOM COURT REPORTING

| Page 365                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 367                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 A. Yes.</p> <p>2 <b>Q. Is that right?</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. And that's what this document</b></p> <p>5 <b>is?</b></p> <p>6 A. Yes.</p> <p>7 <b>Q. Okay. And this is stuff</b></p> <p>8 <b>that, I guess, all happened in June of</b></p> <p>9 <b>2005?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. Okay. All right. Then in</b></p> <p>12 <b>July you received the e-mail that we've</b></p> <p>13 <b>already gone over from Ron Phillips about</b></p> <p>14 <b>the escalating number of guest</b></p> <p>15 <b>complaints. You remember it's already an</b></p> <p>16 <b>exhibit. We went over it.</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. And you sent an e-mail back</b></p> <p>19 <b>in response?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. And then you received a memo</b></p> <p>22 <b>from Rich giving you a coaching and</b></p> <p>23 <b>counseling about the number of guest</b></p>                                                                                                                                                                                                                                          | <p>1 <b>Phillips from June, July, and August that</b></p> <p>2 <b>we've talked about here today; is that</b></p> <p>3 <b>right?</b></p> <p>4 A. Well, the several that you</p> <p>5 speak of as far as coaching and</p> <p>6 counseling is -- and that's why I</p> <p>7 requested to meet with Ron, because this</p> <p>8 is two weeks of some sort of opportunity</p> <p>9 that he feels needs to be addressed, and</p> <p>10 in coaching and teaching and developing,</p> <p>11 you don't keep notes for two weeks to</p> <p>12 address it. You try to address it at</p> <p>13 hand.</p> <p>14 <b>Q. I mean, what you're</b></p> <p>15 <b>criticizing is his management style.</b></p> <p>16 <b>You're saying that if you were in charge,</b></p> <p>17 <b>you would have coached as it occurred --</b></p> <p>18 MS. YORK: I'm going to</p> <p>19 object. That's not his testimony. He's</p> <p>20 explaining. You asked him a question.</p> <p>21 MS. BUSBY: Don't interrupt</p> <p>22 me in the middle of the question again.</p> <p>23 MS. YORK: I can interrupt if</p> |
| Page 366                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page 368                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>1 <b>complaints that y'all have received that</b></p> <p>2 <b>y'all went over on August the 6th related</b></p> <p>3 <b>to things that you were going to do to</b></p> <p>4 <b>immediately readdress the issues. And</b></p> <p>5 <b>that's what's contained in Exhibit 15.</b></p> <p>6 <b>(Whereupon, Defendant's</b></p> <p>7 <b>Exhibit No. 15 was marked for</b></p> <p>8 <b>identification and copy of same is</b></p> <p>9 <b>attached hereto.)</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. And that's your signature</b></p> <p>12 <b>down there that y'all talked and went</b></p> <p>13 <b>over this?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. Okay. So as best I know, and</b></p> <p>16 <b>if you know of any others, just, you</b></p> <p>17 <b>know, we can talk about them. I know</b></p> <p>18 <b>that there are the written warning that</b></p> <p>19 <b>you received in August, on August the</b></p> <p>20 <b>12th that we've already gone over. But</b></p> <p>21 <b>prior to that we have several written</b></p> <p>22 <b>coachings and counselings that you go</b></p> <p>23 <b>over with either Mr. Alexander or Mr.</b></p> | <p>1 I feel that you are testifying or</p> <p>2 changing his testimony. That is not what</p> <p>3 he testified to.</p> <p>4 MS. BUSBY: Actually, all you</p> <p>5 can do is object to the form.</p> <p>6 MS. YORK: Well, I'm</p> <p>7 objecting to the form and for you to stop</p> <p>8 testifying for him or changing his</p> <p>9 testimony.</p> <p>10 <b>Q. (By Ms. Busby) Did you or</b></p> <p>11 <b>did you not just say that in management</b></p> <p>12 <b>you don't wait two weeks for coaching?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. That is your opinion?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. That is apparently different</b></p> <p>17 <b>than what Mr. Alexander believes should</b></p> <p>18 <b>be done?</b></p> <p>19 A. I can't answer that. I don't</p> <p>20 know if anyone else received</p> <p>21 documentation for weeks at a time as I</p> <p>22 have. I don't know if that's his</p> <p>23 management style or not.</p>                                                                                                                          |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 369</p> <p>1 Q. All right. Let's ask these<br/>2 very simple questions then.<br/>3 A. Yes.<br/>4 Q. If there are concerns as<br/>5 listed in Exhibit 13, he could have<br/>6 coached you on each individual one as<br/>7 they came up under your management style,<br/>8 correct?<br/>9 A. No, under coaching.<br/>10 Q. Under coaching?<br/>11 A. Yes. That's our policy.<br/>12 That's Cracker Barrel's.<br/>13 Q. Or he could have written you<br/>14 up as verbal warnings for all of these<br/>15 things, should he have chosen as the<br/>16 general manager to do so?<br/>17 A. That's correct.<br/>18 Q. And by the time we get to the<br/>19 incident of customer complaints in July,<br/>20 he could have given you a final written<br/>21 warning, if he had chosen to do so?<br/>22 A. And I would have had a chance<br/>23 to respond earlier before receiving this</p>        | <p style="text-align: right;">Page 371</p> <p>1 Q. And you understood as of<br/>2 August the 12th specifically what the<br/>3 expectations were for you operationally,<br/>4 food cost wise, and food service wise,<br/>5 participating in management telephone<br/>6 calls, and scheduling and coming to work?<br/>7 A. No. I disputed this because<br/>8 it did not -- again, does not say that he<br/>9 put a freeze on hiring. So sales can't<br/>10 be met. Labor can't be met. Shifts<br/>11 can't be covered.<br/>12 Q. Where is your dispute?<br/>13 A. I disputed that with Rich.<br/>14 Q. Did you put together a<br/>15 written response as you did as is shown<br/>16 in Exhibit 14?<br/>17 A. I did dispute this.<br/>18 Q. My question was: Did you put<br/>19 together a written response?<br/>20 A. I did several responses. I<br/>21 don't know if this is one I've done a<br/>22 written response to. You've shown me one<br/>23 written response, but I did several.</p> |
| <p style="text-align: right;">Page 370</p> <p>1 for weeks at a time.<br/>2 Q. So is that yes? So the<br/>3 answer to my question is yes then?<br/>4 A. Could you repeat the question<br/>5 then?<br/>6 Q. He could have written you up<br/>7 in July for the continued customer<br/>8 complaints that you were experiencing?<br/>9 A. Yes. It was his right to<br/>10 document, yes.<br/>11 Q. And he could have written you<br/>12 up on August the 6th, 2005 when he sent<br/>13 you -- when Mr. Alexander sent you the<br/>14 memorandum related to the things he<br/>15 expected you to immediately address that<br/>16 you signed on August the 6th, 2005, had<br/>17 he chosen to do so? That could have been<br/>18 your final written warning, correct?<br/>19 A. He could have, yes.<br/>20 Q. Okay. Now, your final<br/>21 written warning was August the 12th,<br/>22 which you signed, correct?<br/>23 A. Yes.</p> | <p style="text-align: right;">Page 372</p> <p>1 Q. Do you have a home computer?<br/>2 A. Yes.<br/>3 Q. All right. The Exhibit 14 as<br/>4 an example, you typed that written<br/>5 response up?<br/>6 A. Yes.<br/>7 Q. Did you do it on your home<br/>8 computer?<br/>9 A. No.<br/>10 Q. Where did you do that?<br/>11 A. Cracker Barrel.<br/>12 Q. Have you ever typed any type<br/>13 of written response up on your home<br/>14 computer?<br/>15 A. No.<br/>16 Q. Have you sent an e-mail from<br/>17 your home computer to anybody at Cracker<br/>18 Barrel or about Cracker Barrel?<br/>19 A. About a complaint that I had<br/>20 through their website.<br/>21 Q. What complaint was that?<br/>22 A. It was about treatment last<br/>23 year when I visited one of the</p>                                                                                                                                                                                                            |

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## FREEDOM COURT REPORTING

| Page 373                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 375                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| <p>1 restaurants. I wasn't treated fairly,<br/>2 and I just -- instead of going through<br/>3 any changes with the management team, I<br/>4 chose to e-mail it properly to the home<br/>5 office.</p> <p>6 <b>Q. You made a guest complaint?</b><br/>7 A. Yes.</p> <p>8 <b>Q. Okay. Was this while you</b><br/>9 <b>were employed with Cracker Barrel?</b><br/>10 A. No, I was not employed at the<br/>11 time.</p> <p>12 <b>Q. So you made a guest</b><br/>13 <b>complaint, and I presume through those</b><br/>14 <b>channels you received some sort of</b><br/>15 <b>notification one way or the other about</b><br/>16 <b>the investigation of the guest complaint?</b><br/>17 A. Yes.</p> <p>18 <b>Q. Okay. So that's separate and</b><br/>19 <b>apart from what we're here about today?</b><br/>20 A. Yes. That's the only time<br/>21 I've used e-mail from my house to contact<br/>22 Cracker Barrel.</p> <p>23 <b>Q. All right. I mean, as far as</b></p>                                                                       | <p>1 belong to DOJ or Cracker Barrel that<br/>2 looks into these types of things and that<br/>3 they would get back in contact with me.</p> <p>4 <b>Q. Well, have you heard from</b><br/>5 <b>them?</b><br/>6 A. No. Actually, I relocated.<br/>7 I left her two voicemails because my<br/>8 address had changed, and when I initially<br/>9 moved, my mail didn't follow me right<br/>10 away. And so a lot of my mail was lost,<br/>11 and I don't know if she responded by mail<br/>12 or not. But I haven't spoken to her<br/>13 since.</p> <p>14 <b>Q. Have you followed up?</b><br/>15 A. I haven't spoken with her<br/>16 since.</p> <p>17 <b>Q. As far as you're concerned</b><br/>18 <b>then, have you done what you're going to</b><br/>19 <b>do about it? Are you making it an issue</b><br/>20 <b>in this lawsuit? Do I need to question</b><br/>21 <b>you about it in that regard? I mean,</b><br/>22 <b>that's what I'm trying to get to.</b><br/>23 A. I think the behavior is</p>                       |
| Page 374                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page 376                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p>1 <b>you're concerned, that thing is resolved,</b><br/>2 <b>whatever it was, or do I need to question</b><br/>3 <b>you about that at length today?</b><br/>4 A. They sent me a letter stating<br/>5 that they conducted an investigation and<br/>6 they didn't find anything. But I'm not<br/>7 comfortable with the response, if that's<br/>8 what you're asking.</p> <p>9 <b>Q. Well, are you asserting any</b><br/>10 <b>claim about it?</b><br/>11 A. I did contact EEOC at the<br/>12 time that it happened, and they said that<br/>13 I wasn't employed and that I had to go<br/>14 through other channels. And I contacted<br/>15 Nancy Langworthy at Department of<br/>16 Justice, the Civil Rights Division, per<br/>17 the plaque that they have on their front<br/>18 door to contact them.</p> <p>19 <b>Q. All right. Well, did you</b><br/>20 <b>make a complaint with them?</b><br/>21 A. I was told that they were<br/>22 going to get with Cracker Barrel and that<br/>23 there was also a third party who didn't</p> | <p>1 extending from this, yes.</p> <p>2 <b>Q. All right. Then we'll go</b><br/>3 <b>through all that in a minute then.</b><br/>4 <b>All right. As it relates to</b><br/>5 <b>the lawsuit that you have filed, you are</b><br/>6 <b>suing Cracker Barrel because you believe</b><br/>7 <b>you have -- for a Title 7 violation that</b><br/>8 <b>you think you've been discriminated</b><br/>9 <b>against because of your race; is that</b><br/>10 <b>right?</b><br/>11 A. That was one of the charges<br/>12 in the claim, yes.</p> <p>13 <b>Q. What else is there?</b><br/>14 A. I don't understand the<br/>15 wording. And that I was treated<br/>16 differently than other general managers<br/>17 with the company, with Rich's district.</p> <p>18 <b>Q. Is that the whole claim as</b><br/>19 <b>far as you know?</b><br/>20 A. And the retaliation.</p> <p>21 <b>Q. All right. So that you think</b><br/>22 <b>that you were discriminated against</b><br/>23 <b>because of the comment that we've talked</b></p> |

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| <p style="text-align: right;">Page 377</p> <p>1 about that we're referring to as the<br/>2 funeral comment, correct?<br/>3 A. Yes.<br/>4 Q. And that subsequent to that<br/>5 you were retaliated against?<br/>6 A. As well as the other comments<br/>7 that I made mention of earlier, yes.<br/>8 Q. The comments by third parties<br/>9 or the gentleman named Bill --<br/>10 A. Yes.<br/>11 Q. -- and the group of older men<br/>12 that you did not involve yourself in?<br/>13 A. Yes.<br/>14 Q. That's the sum and substance<br/>15 of the comments and the racial issue, and<br/>16 then we have the retaliation issue?<br/>17 A. Yes.<br/>18 Q. Okay. Is there anything<br/>19 else?<br/>20 A. I don't recall anything else<br/>21 documented.<br/>22 Q. I'm looking at your<br/>23 Complaint. That seems to be it.</p>                                                                                                                                                                      | <p style="text-align: right;">Page 379</p> <p>1 restaurant --<br/>2 Q. Well, you believe what? I<br/>3 mean, complete the sentence.<br/>4 A. That I was singled out that<br/>5 day.<br/>6 Q. As a guest?<br/>7 A. Yes.<br/>8 Q. I understand that you feel<br/>9 that way about that day, your service<br/>10 that day. But does that have any part or<br/>11 are you utilizing that as any part of<br/>12 your evidence for your claim when you<br/>13 were an employee? I mean, you understand<br/>14 you were no longer an employee when that<br/>15 happened?<br/>16 A. Correct.<br/>17 Q. Is that relevant in any<br/>18 manner to your claim when you were an<br/>19 employee?<br/>20 A. I think the retaliation was<br/>21 done from when I was employed there.<br/>22 Q. What do you think the<br/>23 retaliation was?</p>                                                                                                                                                                                                                 |
| <p style="text-align: right;">Page 378</p> <p>1 MS. BUSBY: Do you agree<br/>2 that's the Complaint?<br/>3 MS. YORK: I would have to go<br/>4 through the Complaint again, but I think<br/>5 that's it, yeah.<br/>6 Q. Okay. So the reason I asked<br/>7 that question is to get to this next line<br/>8 of questioning so that -- Monica, feel<br/>9 free to speak up if I don't need to go<br/>10 into this in any great detail. But you<br/>11 made a guest complaint, which is not part<br/>12 of this, other than you think you were<br/>13 not treated correctly in the service of<br/>14 your food as a guest?<br/>15 A. No. I --<br/>16 Q. And you believe that's<br/>17 because you used to work there and the<br/>18 people who still work there treated you<br/>19 differently than other guests?<br/>20 A. No. I believe that, based on<br/>21 the actions that were taken that day and<br/>22 based on their treatment that day of me<br/>23 individually versus other guests in the</p> | <p style="text-align: right;">Page 380</p> <p>1 A. Well, myself and a gentleman<br/>2 -- I'm sorry, two other gentlemen went in<br/>3 to have breakfast, and we were greeted<br/>4 right away, and our server took our drink<br/>5 order and our food order. She brought<br/>6 our first round of drinks.<br/>7 Q. Wait a minute. Before you<br/>8 get into the whole story of what<br/>9 happened, my question was in response to<br/>10 your statement, you said that -- are you<br/>11 saying that you -- you think that the<br/>12 retaliation that you're claiming is in<br/>13 relation to this guest experience?<br/>14 A. Yes.<br/>15 Q. Okay. Go ahead.<br/>16 A. Okay. Apparently something<br/>17 happened with our server with her pants<br/>18 or something, and she physically left the<br/>19 restaurant. Ralph Whiting, one of the<br/>20 managers who was there before when I was<br/>21 employed there was the manager on duty as<br/>22 well as the replacement general manager.<br/>23 When we placed our order, it took a</p> |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 381</p> <p>1 significant amount of time before anyone<br/>2 came back to help us because we learned<br/>3 later that the young lady -- they said<br/>4 she split her pants and left the building<br/>5 and went shopping and things of that<br/>6 nature.<br/>7 <b>Q. She went to take care of her</b><br/>8 <b>obvious issue?</b><br/>9 A. Yes.<br/>10 <b>Q. Okay.</b><br/>11 A. From the time that she served<br/>12 us, we had no service for almost<br/>13 forty-five minutes. It was to the point<br/>14 where --<br/>15 <b>Q. You mean she delivered your</b><br/>16 <b>food but she didn't come back?</b><br/>17 A. She never delivered the<br/>18 food. She only brought the first drink<br/>19 of coffee. She did put the food order<br/>20 in, but apparently it must have happened<br/>21 after she put the food order in. The<br/>22 food came out almost forty minutes later,<br/>23 and it was totally incorrect. Everything</p> | <p style="text-align: right;">Page 383</p> <p>1 A. Yes.<br/>2 <b>Q. Okay. And on this occasion</b><br/>3 <b>this all takes place?</b><br/>4 A. Yes.<br/>5 <b>Q. Okay. Go ahead.</b><br/>6 A. So Ralph refused to come to<br/>7 the table, so I actually had to flag down<br/>8 another server because my server was<br/>9 gone.<br/>10 <b>Q. Well, how do you know he</b><br/>11 <b>refused to come to the table?</b><br/>12 A. The server told me that he<br/>13 wasn't coming out.<br/>14 <b>Q. Do you know who the server</b><br/>15 <b>was?</b><br/>16 A. Yes. I know her first name<br/>17 is Elaine.<br/>18 <b>Q. Okay. So she came back to</b><br/>19 <b>you and said what?</b><br/>20 A. That she asked him to come to<br/>21 the table, and he just would not come. I<br/>22 did not want to just get up and leave<br/>23 because of the litigation that was</p>                                                                                                                                                                                                                                      |
| <p style="text-align: right;">Page 382</p> <p>1 was actually raw.<br/>2 <b>Q. Meaning you got somebody</b><br/>3 <b>else's order?</b><br/>4 A. No. We got what we ordered,<br/>5 but it was cooked raw.<br/>6 <b>Q. Raw?</b><br/>7 A. Raw.<br/>8 <b>Q. I thought you said wrong?</b><br/>9 A. No, raw. I requested one of<br/>10 the young ladies walking by if she would<br/>11 ask Ralph to come out to the table,<br/>12 because between the forty-five minutes<br/>13 I've watched Ralph and the other two<br/>14 servers that was in that section take<br/>15 care of every table except for the table<br/>16 where myself and my two guests were.<br/>17 <b>Q. All right. Now, let me stop</b><br/>18 <b>you right there. Is this the first time</b><br/>19 <b>you had been back to eat since your</b><br/>20 <b>termination?</b><br/>21 A. No.<br/>22 <b>Q. Okay. So you've been back to</b><br/>23 <b>the restaurant without incident?</b></p>                            | <p style="text-align: right;">Page 384</p> <p>1 already in process. So I wanted to -- I<br/>2 asked for my server, and no one could<br/>3 seem to find my server. When the food<br/>4 came out raw, another server, and I can't<br/>5 think of her name, came to the table, and<br/>6 she just started apologizing because she<br/>7 overheard Ralph and the grill cook and<br/>8 the other manager in the kitchen talking<br/>9 about my table. But the grill cook, his<br/>10 name is Shawn -- Shawn approached me the<br/>11 following day. I was at the supermarket,<br/>12 and he again apologized.<br/>13 <b>Q. Which supermarket?</b><br/>14 A. It's a store on the main<br/>15 highway there, a supermarket. I don't<br/>16 know the name of the supermarket, but<br/>17 that's where I saw him. And he -- Shawn<br/>18 informed me at that time that he -- when<br/>19 they mentioned that the food was<br/>20 incorrect and that was for my table,<br/>21 because he had worked there before, he --<br/>22 you know, he always was a breakfast cook.<br/>23 Whenever I ate breakfast, he usually</p> |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 385</p> <p>1 would fix it and he knew how I liked my<br/>2 food, so he would take care of it.<br/>3 He informed me then that<br/>4 Ralph and the other manager on duty told<br/>5 him to move from the grill, that they'll<br/>6 take care of it, and the reason the food<br/>7 came out that way is because he had just<br/>8 put the food down and they took it and<br/>9 scraped it up on the spatula and put it<br/>10 on the plate with all the grind and the<br/>11 grill scrapings and everything. And<br/>12 Ralph physically delivered that to the<br/>13 table and walked off.<br/>14 <b>Q. Who was with you at your</b><br/>15 <b>table?</b><br/>16 A. My best friend, Webster<br/>17 Cross, and another friend that came in<br/>18 from Atlanta, Frank Tasala. They, too,<br/>19 sent an e-mail in about -- no. They<br/>20 filled out the forms to complain and sent<br/>21 them in. The problem --<br/>22 <b>Q. Now, how was their food?</b><br/>23 <b>Their food came out fine?</b></p>                                        | <p style="text-align: right;">Page 387</p> <p>1 to flag down servers from other dining<br/>2 rooms to go get a manager, go get<br/>3 somebody to come out to help us or see if<br/>4 they could find out what is going on.<br/>5 And again, they were all<br/>6 coming back, you know, they won't come<br/>7 out. We're sorry, this and that, to the<br/>8 point where I said, I'm sorry, I'm going<br/>9 to leave. And I asked Webster to deal<br/>10 with it because I didn't want them to<br/>11 think that he was talking to them about<br/>12 this again from me being there.<br/>13 <b>Q. So what happened? I mean, I</b><br/>14 <b>know you weren't there, but did Webster</b><br/>15 <b>talk to somebody?</b><br/>16 A. Yes. Actually, I left out of<br/>17 the restaurant, and I walked towards the<br/>18 back of the restaurant, and Ralph was<br/>19 actually smoking a cigarette out back.<br/>20 So I came back in to let Webster know,<br/>21 you know, pay for the food, get the<br/>22 receipt, and we'll go through the<br/>23 channels. As I was coming in, Ralph was</p>                         |
| <p style="text-align: right;">Page 386</p> <p>1 A. It was incorrect. The whole<br/>2 table came out raw and bad. Web asked me<br/>3 to -- I said, well, you stay there.<br/>4 Maybe the manager will come out and talk<br/>5 to you, and I'll leave out because I<br/>6 don't want them to think that this is<br/>7 something between with what's happening,<br/>8 and I left my money for him to pay<br/>9 because I didn't want them to say I did<br/>10 not pay for it regardless of it, and I<br/>11 was just going to go ahead and send in<br/>12 the complaint.<br/>13 At which time the young lady<br/>14 walked past the table that had three<br/>15 servers assigned to the one section. She<br/>16 gave coffee to this table. Mine was<br/>17 empty. I asked for my coffee. She<br/>18 simply walked right past me. Another<br/>19 young lady that was also serving that<br/>20 portion of the dining room, I asked her<br/>21 if she would go check on our server<br/>22 because our server was gone for so long.<br/>23 She walked right past me. I actually had</p> | <p style="text-align: right;">Page 388</p> <p>1 coming around the building and he went<br/>2 inside right before me.<br/>3 The young lady named<br/>4 Brittany, she was a hostess, came back up<br/>5 at that time and said that -- and I don't<br/>6 know her GM's name at the time. Said<br/>7 that Rich Alexander told them that they<br/>8 did not have to serve me, and if I had a<br/>9 problem, simply call home office. I had<br/>10 a problem with the fact that not only did<br/>11 I sit there for almost an hour and twenty<br/>12 minutes, but they served every table<br/>13 around my table. And when one young lady<br/>14 came over to ask if she could help me,<br/>15 she was -- and these are her words, that<br/>16 she was called to the back while we was<br/>17 in there, Ralph physically walked to the<br/>18 breezeway and called her to the back and<br/>19 she came back and walked over real<br/>20 quickly and said he said I can't help<br/>21 you, I can't serve you, and she went to<br/>22 the first dining room, because I was in<br/>23 the second dining room. And at that</p> |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 389</p> <p>1 point is when I left. So that's the fact<br/> 2 that they told the grill cook, move over,<br/> 3 we've got this. They delivered the raw<br/> 4 food. It was delivered.<br/> 5 <b>Q. All right. Now, you, I</b><br/> 6 <b>think, as part of the things that you</b><br/> 7 <b>have produced, produced some sort of</b><br/> 8 <b>statements. Is that what these</b><br/> 9 <b>statements are related to?</b><br/> 10 A. Yes.<br/> 11 <b>Q. All right. Did you take</b><br/> 12 <b>those statements? I mean, how did you</b><br/> 13 <b>get those statements?</b><br/> 14 A. No. They were given to me.<br/> 15 They knew that -- they knew where I was<br/> 16 working, and the statements were actually<br/> 17 brought to me.<br/> 18 <b>Q. Who brought them to you?</b><br/> 19 A. The individual people.<br/> 20 <b>Q. Well, I mean, they brought</b><br/> 21 <b>them one at a time?</b><br/> 22 A. I received one while I was at<br/> 23 work. I received two other statements</p> | <p style="text-align: right;">Page 391</p> <p>1 did not do.<br/> 2 <b>Q. That was whose claim?</b><br/> 3 A. Cracker Barrel. That's what<br/> 4 they said to me.<br/> 5 <b>Q. Who is they?</b><br/> 6 A. Allison something from the<br/> 7 people who respond to your e-mail when<br/> 8 you e-mail in. She called me back and<br/> 9 asked questions. And her second phone<br/> 10 call was -- she asked me if I had<br/> 11 statements and I said yes. She asked me<br/> 12 how I obtained the statements, and I told<br/> 13 her, and she said that, well, from her<br/> 14 understanding that the managers up there<br/> 15 told her that I was at Cracker Barrel<br/> 16 soliciting statements which were not<br/> 17 true. But I informed her at that time<br/> 18 that that wasn't true as well.<br/> 19 <b>Q. Did she ask you to send in</b><br/> 20 <b>any statements?</b><br/> 21 A. She never asked for the<br/> 22 statements, no. And I did make her aware<br/> 23 that I had them.</p> |
| <p style="text-align: right;">Page 390</p> <p>1 from one person, but --<br/> 2 <b>Q. Well, who is the one person?</b><br/> 3 A. Veronica gave me a statement<br/> 4 from herself, and I don't know who the<br/> 5 other person was.<br/> 6 <b>Q. I mean, are you friends with</b><br/> 7 <b>Veronica?</b><br/> 8 A. No, no more than our working<br/> 9 relationship that she had prior.<br/> 10 <b>Q. Did she bring them to your</b><br/> 11 <b>house?</b><br/> 12 A. No.<br/> 13 <b>Q. Where did she bring them to?</b><br/> 14 A. Out front of Ruby Tuesday.<br/> 15 <b>Q. So she called you and said,</b><br/> 16 <b>meet me outside, I'm bringing you</b><br/> 17 <b>something?</b><br/> 18 A. Yes.<br/> 19 <b>Q. All right. Well, who did you</b><br/> 20 <b>talk to about doing the statements?</b><br/> 21 A. I didn't speak to anyone.<br/> 22 That was their claim, that I was at the<br/> 23 restaurant soliciting statements, which I</p>                                                                                  | <p style="text-align: right;">Page 392</p> <p>1 <b>Q. Okay. Anything else about</b><br/> 2 <b>that?</b><br/> 3 A. No.<br/> 4 <b>Q. Does that cover everything?</b><br/> 5 A. Pretty much, yes.<br/> 6 <b>Q. All right. And so to your</b><br/> 7 <b>knowledge were your friends ever</b><br/> 8 <b>contacted?</b><br/> 9 A. Frank, yes. Webster, no.<br/> 10 <b>Q. Okay. And Frank was</b><br/> 11 <b>contacted by whom?</b><br/> 12 A. I don't know by whom. I know<br/> 13 he got a letter, though. I don't know<br/> 14 what person sent him the letter.<br/> 15 <b>Q. Are you still friends with</b><br/> 16 <b>those two people?</b><br/> 17 A. Yes.<br/> 18 <b>Q. What about Cornelius</b><br/> 19 <b>Browning, are you friends with him?</b><br/> 20 A. Carlos Browning? No, we're<br/> 21 not friends.<br/> 22 <b>Q. I mean, do you talk to him?</b><br/> 23 A. I haven't in quite some time.</p>                                                                                            |

## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 393</p> <p>1 <b>Q. What about Veronica McCall?</b><br/> 2 A. Again, I haven't spoken to<br/> 3 them in quite some time.<br/> 4 <b>Q. All right. You have made a</b><br/> 5 <b>claim for -- for some pay that you missed</b><br/> 6 <b>in between the time that you were</b><br/> 7 <b>employed by Cracker Barrel and Ruby</b><br/> 8 <b>Tuesday as I understand it; is that</b><br/> 9 <b>correct?</b><br/> 10 A. Yes.<br/> 11 <b>Q. And that's the difference</b><br/> 12 <b>between what you claim you made and what</b><br/> 13 <b>you make now?</b><br/> 14 A. No. The original claim --<br/> 15 but this was asked of Ruby Tuesday, was<br/> 16 initially I was scheduled to go on<br/> 17 vacation, and I also was supposed to<br/> 18 receive a bonus check from Gardendale,<br/> 19 Alabama as well as Montgomery. And I was<br/> 20 told that I had the bonus check, but<br/> 21 because I was not physically at the<br/> 22 company, which the check was cut two days<br/> 23 later, I was not entitled.</p>  | <p style="text-align: right;">Page 395</p> <p>1 <b>involved in any other lawsuit?</b><br/> 2 A. A car accident.<br/> 3 <b>Q. When was that?</b><br/> 4 A. Years ago. It was settled.<br/> 5 It was nothing. She just took care of<br/> 6 the physical therapy bill and there was<br/> 7 nothing going after her for anything<br/> 8 extra.<br/> 9 <b>Q. Have you ever filed</b><br/> 10 <b>bankruptcy?</b><br/> 11 A. Yes.<br/> 12 <b>Q. When did you file bankruptcy?</b><br/> 13 A. I don't recall. 2001 maybe.<br/> 14 2000, 2001, somewhere around there.<br/> 15 <b>Q. Who handled it? Do you</b><br/> 16 <b>remember?</b><br/> 17 A. I'm sorry?<br/> 18 <b>Q. Do you remember who handled</b><br/> 19 <b>it?</b><br/> 20 A. No, I don't. But I do know<br/> 21 he -- I can't remember his name, but I<br/> 22 know he's deceased.<br/> 23 <b>Q. Well, where did you file it,</b></p>                          |
| <p style="text-align: right;">Page 394</p> <p>1 <b>Q. In other words, it's one of</b><br/> 2 <b>those policies that you have to be there</b><br/> 3 <b>to earn the bonus?</b><br/> 4 A. That's what I was told.<br/> 5 <b>Q. Okay. Now, the bonus checks</b><br/> 6 <b>are calculated on a combination of things</b><br/> 7 <b>including the sales of the restaurant,</b><br/> 8 <b>food cost and labor cost, and all those</b><br/> 9 <b>kind of things, correct?</b><br/> 10 A. That's correct.<br/> 11 <b>Q. Do you have any -- I mean, do</b><br/> 12 <b>you have a -- you're making a specific</b><br/> 13 <b>claim for a bonus. Are you saying you</b><br/> 14 <b>know what your bonus would have been?</b><br/> 15 A. No.<br/> 16 <b>Q. But you had received</b><br/> 17 <b>statements -- I mean bonuses in the past</b><br/> 18 <b>by virtue of being a manager?</b><br/> 19 A. Yes.<br/> 20 <b>Q. Based on that combination of</b><br/> 21 <b>things that bonuses are paid on?</b><br/> 22 A. Yes.<br/> 23 <b>Q. Okay. Have you ever been</b></p> | <p style="text-align: right;">Page 396</p> <p>1 <b>Georgia?</b><br/> 2 A. Atlanta.<br/> 3 <b>Q. Georgia?</b><br/> 4 A. Georgia, yes.<br/> 5 <b>Q. But so only one bankruptcy?</b><br/> 6 A. Yes.<br/> 7 <b>Q. Were you discharged from</b><br/> 8 <b>bankruptcy? Do you know?</b><br/> 9 A. Yes.<br/> 10 <b>Q. Have you talked to anybody</b><br/> 11 <b>else about your lawsuit, any other</b><br/> 12 <b>Cracker Barrel employees or anybody else</b><br/> 13 <b>who has filed a lawsuit or thinking about</b><br/> 14 <b>filing a lawsuit?</b><br/> 15 A. Not about my suit, no.<br/> 16 <b>Q. Have you talked to anybody</b><br/> 17 <b>else about anybody else's suit or</b><br/> 18 <b>potential suit?</b><br/> 19 A. No. Anyone who I talked to<br/> 20 were in just general conversation, but<br/> 21 nothing about anything that they are<br/> 22 doing.<br/> 23 <b>Q. Well, have you told anybody</b></p> |

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| <p style="text-align: right;">Page 397</p> <p>1 you filed the lawsuit?</p> <p>2 A. My best friend.</p> <p>3 Q. Well, anybody employed with</p> <p>4 Cracker Barrel?</p> <p>5 A. No.</p> <p>6 Q. Is your best friend employed</p> <p>7 by Cracker Barrel?</p> <p>8 A. No.</p> <p>9 Q. So you've not spoken to</p> <p>10 another Cracker Barrel employee about the</p> <p>11 lawsuit?</p> <p>12 A. No.</p> <p>13 Q. What about Linda Ogborne?</p> <p>14 Have you talked to her?</p> <p>15 A. I haven't talked to her in</p> <p>16 almost two years maybe.</p> <p>17 Q. What about Charlotte?</p> <p>18 A. The same. Shortly after I</p> <p>19 left from Birmingham to move to</p> <p>20 Montgomery, quite naturally, just like</p> <p>21 the other restaurants, they would call</p> <p>22 and say, hello, are you okay, how is</p> <p>23 things going, but --</p>                                                                                                                                                                                           | <p style="text-align: right;">Page 399</p> <p>1 that they sent down there to help you?</p> <p>2 A. Paula Pate was the retail</p> <p>3 store opening supervisor, and the store</p> <p>4 opening supervisor, I don't recall her</p> <p>5 name.</p> <p>6 Q. That's okay. I mean, but</p> <p>7 basically when you open a new store, you</p> <p>8 have the general manager and the</p> <p>9 associate managers that are there, but</p> <p>10 they also send opening supervisors and</p> <p>11 others to help get the store open?</p> <p>12 A. They are responsible for</p> <p>13 their team, yes.</p> <p>14 Q. And they bring a team of</p> <p>15 people, however many it is?</p> <p>16 A. Yes.</p> <p>17 Q. How long do they stay?</p> <p>18 A. Two weeks after opening, but</p> <p>19 then they are all given assignments to go</p> <p>20 to the next store opening, yes.</p> <p>21 Q. Okay. Did you have any of --</p> <p>22 talking about those managers that were</p> <p>23 there when you started, did you have any</p> |
| <p style="text-align: right;">Page 398</p> <p>1 Q. When you were talking with</p> <p>2 Ms. Curry, did you talk to anybody or try</p> <p>3 to give her any information or contact</p> <p>4 information about anybody who you claimed</p> <p>5 would be your witnesses?</p> <p>6 A. I don't understand. My</p> <p>7 witnesses?</p> <p>8 Q. People that you say would</p> <p>9 substantiate what your claim is.</p> <p>10 A. I don't recall. Again, in</p> <p>11 our conversation, because we were there</p> <p>12 for a hour, she might have said this</p> <p>13 happened, she might have said was there</p> <p>14 anyone around. And if somebody else was</p> <p>15 around, I don't know if they did or did</p> <p>16 not have firsthand information or</p> <p>17 anything. I just don't recall.</p> <p>18 Q. When you opened that store in</p> <p>19 Montgomery, you said you were there as</p> <p>20 the general manager when it opened?</p> <p>21 A. Yes.</p> <p>22 Q. Who was the store operating</p> <p>23 supervisor or store opening supervisor</p> | <p style="text-align: right;">Page 400</p> <p>1 of them quit during the time you were the</p> <p>2 general manager?</p> <p>3 A. One transferred. He had</p> <p>4 allegations against him, and that was</p> <p>5 Brian. I can't think of his last name.</p> <p>6 Q. When you say allegations</p> <p>7 against him, what do you mean?</p> <p>8 A. One of the young ladies --</p> <p>9 there was a rumor, I should say, not</p> <p>10 allegations, that one of the hourly</p> <p>11 employees were involved. He denied it,</p> <p>12 and shortly thereafter he transferred,</p> <p>13 but then I understand he left the company</p> <p>14 shortly after that.</p> <p>15 Q. Did you do any investigations</p> <p>16 while you were a general manager?</p> <p>17 A. Yes.</p> <p>18 Q. All right. What would you</p> <p>19 do, like take statements or let people</p> <p>20 write out their own statements and gather</p> <p>21 the information?</p> <p>22 A. Yes.</p> <p>23 Q. And then after you did that,</p>               |

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| <p style="text-align: right;">Page 401</p> <p>1 kind of like those statements we've<br/>2 looked at, you would just get them to<br/>3 write them out and you would just send<br/>4 them in, or how would you do that?<br/>5 A. They were done by fax and<br/>6 then Rich would come and get copies<br/>7 whenever he came to get them.<br/>8 Q. And did you make<br/>9 recommendations and decisions about<br/>10 discipline and disciplining the people?<br/>11 A. After speaking with human<br/>12 resources about the case itself, they<br/>13 gave us the feedback on their<br/>14 recommendations, but they do give us a<br/>15 chance to do some feedback.<br/>16 Q. Did you ever fire anybody<br/>17 while you were with Cracker Barrel?<br/>18 A. Yes.<br/>19 Q. Okay. And these are just<br/>20 kind of follow-up things from things I've<br/>21 already asked you. I realized this when<br/>22 we were on the break. On your<br/>23 questionnaire you wrote down Sam Dunbar</p> | <p style="text-align: right;">Page 403</p> <p>1 A. Yes.<br/>2 Q. All right. When she died,<br/>3 did she have the name Dunbar or did she<br/>4 have another name?<br/>5 A. No. She had Dunbar.<br/>6 Q. What was her other name?<br/>7 A. I don't know.<br/>8 Q. Do you have any kind of like,<br/>9 you know, sometime at funerals they give<br/>10 out little pamphlets about the people or<br/>11 anything like that? Did you keep any of<br/>12 those kind of things?<br/>13 A. No, I don't collect those<br/>14 since my mother's death.<br/>15 Q. Okay. How is Viola Dunbar<br/>16 related to you?<br/>17 A. My mother and her father were<br/>18 together, but he's not my father.<br/>19 Q. Wait.<br/>20 A. I'm sorry. My mother and her<br/>21 brother were together in a relationship,<br/>22 but he is not -- her husband -- her<br/>23 brother is not my father.</p> |
| <p style="text-align: right;">Page 402</p> <p>1 as your contact person?<br/>2 A. Yes.<br/>3 Q. That's the same last name as<br/>4 the aunt?<br/>5 A. Yes.<br/>6 Q. Are they related?<br/>7 A. No.<br/>8 Q. That's weird.<br/>9 A. Yeah. Sam is my friend in<br/>10 Alabama. He's the only person I knew in<br/>11 Alabama. Viola Dunbar, her last name --<br/>12 she has another -- that's her maiden, but<br/>13 that's not her married. She was back to<br/>14 her -- she has two names, but they are<br/>15 not related.<br/>16 Q. All right. Well, you're<br/>17 going to have to help me with this. You<br/>18 can find out the records of these<br/>19 funerals so I can try to get this date so<br/>20 we can all be on the same page.<br/>21 A. Okay.<br/>22 Q. All right. Viola Dunbar, she<br/>23 was the one in South Carolina?</p>                                                                                                                                            | <p style="text-align: right;">Page 404</p> <p>1 Q. Viola's brother?<br/>2 A. And my mother.<br/>3 Q. Viola's brother. And what's<br/>4 his name?<br/>5 A. Thomas.<br/>6 Q. Thomas Dunbar?<br/>7 A. Yes.<br/>8 Q. Was your mother's significant<br/>9 other?<br/>10 A. For a period of time, yes.<br/>11 Q. Okay. And did Viola have any<br/>12 children?<br/>13 A. Yes.<br/>14 Q. What are their names?<br/>15 A. Michael and Tracy.<br/>16 Q. What are their last names?<br/>17 A. I don't know. They were --<br/>18 my father has been deceased since I was<br/>19 two, so that was -- we kept in contact<br/>20 very rarely.<br/>21 Q. You called him your father<br/>22 then, but he really wasn't your father.<br/>23 Are you talking about your real father?</p>                                                                                                           |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 405</p> <p>1 A. Right. Him and my mother<br/>2 were friends.<br/>3 Q. Look, that's fine with me.<br/>4 I'm just trying to figure out. I mean,<br/>5 I'm not trying to get anything like<br/>6 that. Was he your father?<br/>7 A. No. My father was deceased.<br/>8 Q. Okay. That's what I'm<br/>9 getting to. So your real father is not<br/>10 related to Viola?<br/>11 A. Correct.<br/>12 Q. Okay. Fine. So Viola's<br/>13 children, what are their last names?<br/>14 A. My understanding Dunbar as<br/>15 well.<br/>16 Q. Okay. Fine. Good. It's her<br/>17 brother, he's a Dunbar as well?<br/>18 A. Yes.<br/>19 Q. And when she died, her name<br/>20 was Viola Dunbar?<br/>21 A. Yes.<br/>22 Q. In Aikens, South Carolina?<br/>23 A. Yes.</p> | <p style="text-align: right;">Page 407</p> <p>1 Carolina?<br/>2 A. I've already testified yes to<br/>3 that.<br/>4 Q. I know you testified. I just<br/>5 want to make sure I'm clear on it when I<br/>6 look her up.<br/>7 A. Yes.<br/>8 Q. Okay. Perfect. Do you know<br/>9 her middle name by chance?<br/>10 A. No.<br/>11 Q. All right. Was she married<br/>12 at the time?<br/>13 A. No.<br/>14 Q. And Aikens, South Carolina is<br/>15 where the funeral was?<br/>16 A. Yes.<br/>17 Q. Okay. So that ought to tell<br/>18 us the date of the funeral.<br/>19 A. Okay.<br/>20 Q. Okay. Now, we got off on<br/>21 that topic because we were talking about<br/>22 your friend Sam Dunbar who was not even<br/>23 related to this woman, correct?</p>                                                                         |
| <p style="text-align: right;">Page 406</p> <p>1 Q. And she was buried in Aikens,<br/>2 South Carolina?<br/>3 A. Yes.<br/>4 Q. Fine. So we ought to be able<br/>5 to find her by that, wouldn't you think?<br/>6 A. Yes.<br/>7 Q. I mean, is there anything<br/>8 else that I need to know about her?<br/>9 A. No.<br/>10 Q. And if it wasn't her, it was<br/>11 the other aunt?<br/>12 A. Sherry Thompson.<br/>13 Q. Sherry Thompson who was in<br/>14 Athens?<br/>15 A. Correct.<br/>16 Q. And he was buried in Athens?<br/>17 A. Yes.<br/>18 Q. Funeral was in Athens?<br/>19 A. Yes.<br/>20 Q. Which means the March funeral<br/>21 that you attended had to be Ms. Dunbar,<br/>22 because she is the only one buried in<br/>23 South Carolina, and you went to South</p>            | <p style="text-align: right;">Page 408</p> <p>1 A. Right.<br/>2 Q. Who is Ms. Ray? That's<br/>3 somebody else you listed.<br/>4 A. Shauna Ray is manager with<br/>5 Cracker Barrel. She was with me in<br/>6 Georgia when I was with Cracker Barrel,<br/>7 and when I went to Montgomery, she came<br/>8 to Montgomery from time to time to help<br/>9 the Montgomery market.<br/>10 Q. Okay. So she would work<br/>11 inside the store occasionally?<br/>12 A. Yes, like I did before to<br/>13 help, she did the same thing.<br/>14 Q. Do you keep in touch with<br/>15 her?<br/>16 A. Yes.<br/>17 Q. Do you still talk with her?<br/>18 A. Yes. I haven't in a couple<br/>19 of months, but yes.<br/>20 Q. Did you hire any of the<br/>21 former Cracker Barrel employees to work<br/>22 at Ruby Tuesday?<br/>23 A. Yes.</p> |

102 (Pages 405 to 408)

## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 409</p> <p>1 <b>Q. All right. Who did you hire?</b><br/> 2 A. Her first name is Sonya.<br/> 3 Well, no, I didn't hire her. She worked<br/> 4 at Ruby Tuesday's, but I didn't hire her.<br/> 5 <b>Q. Okay.</b><br/> 6 A. The answer is no. They<br/> 7 worked there, too, part-time jobs, but I<br/> 8 didn't physically hire them.<br/> 9 <b>Q. Okay. Who was it? Sonya and</b><br/> 10 <b>who is the other one?</b><br/> 11 A. I know Sonya was still doing<br/> 12 double duty. I don't recall the other --<br/> 13 there was two servers, but I know they<br/> 14 worked at Cracker Barrel. But when I got<br/> 15 to Ruby's, they were already there.<br/> 16 <b>Q. I seem to remember you had</b><br/> 17 <b>some interrogatory responses. Do you</b><br/> 18 <b>know what I mean when I say interrogatory</b><br/> 19 <b>responses?</b><br/> 20 A. No.<br/> 21 <b>Q. We send written questions,</b><br/> 22 <b>and y'all had to put answers together.</b><br/> 23 <b>Here, I'll just show them to you. That's</b></p>                                                                      | <p style="text-align: right;">Page 411</p> <p>1 <b>That's fine.</b><br/> 2 <b>You say that you haven't</b><br/> 3 <b>filed any other EEOC charges with the</b><br/> 4 <b>exception of the September 2005 EEOC</b><br/> 5 <b>claim. All right. Then you list the</b><br/> 6 <b>colleges, again, where you didn't</b><br/> 7 <b>graduate, but you've already told me what</b><br/> 8 <b>they were.</b><br/> 9 <b>This is where I read it. I</b><br/> 10 <b>can't figure this out. Interrogatory</b><br/> 11 <b>number eleven you said you were owed a</b><br/> 12 <b>bonus for seventeen thousand dollars.</b><br/> 13 <b>How do you come up with that figure?</b><br/> 14 A. No. The -- I was due a bonus<br/> 15 from -- that's also including vacation.<br/> 16 I had two weeks of vacation that they<br/> 17 denied me, as well as my bonus from<br/> 18 Gardendale and from Montgomery.<br/> 19 <b>Q. Well, just do the math for</b><br/> 20 <b>me. I mean, just how are you -- I mean,</b><br/> 21 <b>I need to know how to, you know,</b><br/> 22 <b>determine what you're claiming. So</b><br/> 23 <b>seventeen thousand dollars. You came up</b></p> |
| <p style="text-align: right;">Page 410</p> <p>1 <b>what they were.</b><br/> 2 MS. BUSBY: But then y'all<br/> 3 sent a supplement, I think, answering<br/> 4 some questions we asked. Is that how<br/> 5 that came about?<br/> 6 MS. YORK: (Nods head.)<br/> 7 <b>Q. One of them asked just to</b><br/> 8 <b>tell us what your residence is, where you</b><br/> 9 <b>lived, and your supplement -- well, here,</b><br/> 10 <b>I better give you that, too. That's the</b><br/> 11 <b>supplement. That's a letter from your</b><br/> 12 <b>lawyer that's giving your supplemental</b><br/> 13 <b>answers to the interrogatories. And</b><br/> 14 <b>that's in response to a follow-up that we</b><br/> 15 <b>sent where we asked number two. I guess</b><br/> 16 <b>these are your addresses that you can</b><br/> 17 <b>remember for the last ten years; is that</b><br/> 18 <b>right? Does that look correct to you?</b><br/> 19 <b>Look on the letter. That would be the</b><br/> 20 <b>easiest thing.</b><br/> 21 A. Yes.<br/> 22 <b>Q. Okay. You're going to give</b><br/> 23 <b>the verification to get all that stuff.</b></p> | <p style="text-align: right;">Page 412</p> <p>1 <b>with that figure based on what you</b><br/> 2 <b>believe you were owed for two weeks of</b><br/> 3 <b>vacation and this says a bonus, but now</b><br/> 4 <b>you're saying two bonuses?</b><br/> 5 A. Well, when I was in one<br/> 6 location, so the bonus came from two<br/> 7 different locations, but it's in the same<br/> 8 period time frame.<br/> 9 <b>Q. What part of this seventeen</b><br/> 10 <b>thousand is the bonus you're claiming?</b><br/> 11 A. I'm not sure. Based on my<br/> 12 previous bonuses if -- my average bonuses<br/> 13 from the past, I know that from<br/> 14 Montgomery I should have received a bonus<br/> 15 from June, July, and August, which is<br/> 16 calculated differently than from<br/> 17 Gardendale.<br/> 18 <b>Q. All right. Let me ask it</b><br/> 19 <b>this way: Are you guessing that that</b><br/> 20 <b>would be the amount based on other</b><br/> 21 <b>bonuses you've received if you were</b><br/> 22 <b>eligible for a bonus?</b><br/> 23 A. This amount is from numbers</p>                                                                   |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 413</p> <p>1 that I received while at Cracker Barrel.<br/> 2 Yes, for July and August and from the<br/> 3 numbers that I received from Gardendale<br/> 4 in June and also --<br/> 5 <b>Q. I don't know what you're</b><br/> 6 <b>referring to. When you say numbers, do</b><br/> 7 <b>you have notes of some numbers that you</b><br/> 8 <b>received?</b><br/> 9 A. No, I was at the company, so<br/> 10 our P&amp;Ls are done monthly. So at the end<br/> 11 of every month you pretty much can figure<br/> 12 your bonus out.<br/> 13 <b>Q. Just do the math for me.</b><br/> 14 <b>Okay. Basically you came up with this</b><br/> 15 <b>number based on information you had seen</b><br/> 16 <b>in June and July and August, right?</b><br/> 17 A. Yes.<br/> 18 <b>Q. All right. What then did you</b><br/> 19 <b>calculate for June, for July, and for</b><br/> 20 <b>August?</b><br/> 21 A. I can't recall the exact<br/> 22 amounts for each bonus.<br/> 23 <b>Q. Well, how did you come up</b></p>                                               | <p style="text-align: right;">Page 415</p> <p>1 <b>last two people as witnesses. I just</b><br/> 2 <b>want to make sure it's Jerome Kelly and</b><br/> 3 <b>Kevin Harris; is that correct?</b><br/> 4 A. Yes.<br/> 5 <b>Q. All right. Who are these</b><br/> 6 <b>people, general managers of what?</b><br/> 7 A. Cracker Barrel.<br/> 8 <b>Q. So they are not going to be</b><br/> 9 <b>witnesses for you?</b><br/> 10 A. No.<br/> 11 <b>Q. Have you talked to them?</b><br/> 12 A. No. They were other general<br/> 13 managers, but they were not with me at my<br/> 14 time that I was, so they didn't have any<br/> 15 firsthand information.<br/> 16 <b>Q. All right. Do you have any</b><br/> 17 <b>other witnesses that you're going to rely</b><br/> 18 <b>on that are not listed here? Now, that</b><br/> 19 <b>would be Tommy Patterson, Rich Alexander,</b><br/> 20 <b>Penny Schmidt, and yourself, obviously.</b><br/> 21 <b>Anybody else that you're going to rely on</b><br/> 22 <b>for your case?</b><br/> 23 A. I did submit Charlotte and</p> |
| <p style="text-align: right;">Page 414</p> <p>1 <b>with putting this number of seventeen</b><br/> 2 <b>thousand here per your lawyers on May the</b><br/> 3 <b>7th, 2007?</b><br/> 4 A. Again, it was -- this was<br/> 5 done prior to my termination. With the<br/> 6 profit and loss statements being done<br/> 7 monthly, I can't break this down, though,<br/> 8 because I just don't remember what was<br/> 9 due from Gardendale, what was due for<br/> 10 July and August and including my<br/> 11 vacation.<br/> 12 <b>Q. So you cannot tell me how you</b><br/> 13 <b>calculated the seventeen thousand</b><br/> 14 <b>dollars?</b><br/> 15 A. I can tell you where the<br/> 16 information came from, but I just can't<br/> 17 break it down to how I got what amount<br/> 18 from what month from what store.<br/> 19 <b>Q. All right. You're removing</b><br/> 20 <b>Jerome Kelly and Kevin Harris as</b><br/> 21 <b>witnesses? Is that what this means?</b><br/> 22 <b>There's a statement on number twelve in</b><br/> 23 <b>the letter that says we're removing the</b></p> | <p style="text-align: right;">Page 416</p> <p>1 Linda's name to the EEOC as well.<br/> 2 <b>Q. Okay. Anybody other than</b><br/> 3 <b>those people?</b><br/> 4 A. And Shauna Ray.<br/> 5 <b>Q. Shauna Ray. Okay. Do you</b><br/> 6 <b>have any other statements? Have you</b><br/> 7 <b>taken any written statements or gotten</b><br/> 8 <b>any written statements or read any</b><br/> 9 <b>written statements that any of these</b><br/> 10 <b>people have given about the matter?</b><br/> 11 A. No.<br/> 12 <b>Q. When did you apply for your</b><br/> 13 <b>job at Ruby Tuesday's?</b><br/> 14 A. I don't know the exact date.<br/> 15 <b>Q. Did you apply at Ruby</b><br/> 16 <b>Tuesday's prior to your termination at</b><br/> 17 <b>Cracker Barrel?</b><br/> 18 A. No.<br/> 19 <b>Q. Did you go physically and</b><br/> 20 <b>fill out a handwritten application at</b><br/> 21 <b>Ruby Tuesday's?</b><br/> 22 A. I don't remember the process<br/> 23 because I did so many online and I faxed</p>                                                   |

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## FREEDOM COURT REPORTING

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| <p style="text-align: right;">Page 417</p> <p>1 so many, e-mailed so many. I don't<br/>2 remember how I made the contact with<br/>3 Ruby.<br/>4 MS. BUSBY: Okay. I'm going<br/>5 pass the witness to y'all while I look at<br/>6 these notes so we don't have to stop, if<br/>7 that's okay, because, I think, unless<br/>8 Ashley writes me a note, that I might<br/>9 have covered my follow-up questions. And<br/>10 I know you said that you have a few.<br/>11 (Whereupon, a brief recess<br/>12 was taken.)<br/>13 <b>Q. (By Ms. Busby) Mr. Rodgers,</b><br/>14 <b>I wrote down in my notes that you said</b><br/>15 <b>you got some documents from the EEOC. Do</b><br/>16 <b>you know which ones those were?</b><br/>17 A. No. I just turned everything<br/>18 over to Breedlove and Lassiter.<br/>19 <b>Q. Who gave them to you at the</b><br/>20 <b>EEOC? That might help me.</b><br/>21 A. They weren't physically given<br/>22 to me. They were mailed. It was through<br/>23 a request by having to write in to say to</p> | <p style="text-align: right;">Page 419</p> <p>1 EXAMINATION<br/>2 BY MS. YORK:<br/>3 <b>Q. Let's go back to Exhibit 5,</b><br/>4 <b>your Charge of Discrimination with the</b><br/>5 <b>EEOC, and you state that it was based on</b><br/>6 <b>race and retaliation; is that correct?</b><br/>7 A. Yes.<br/>8 <b>Q. Okay. Can you -- you went</b><br/>9 <b>into -- you testified earlier that the</b><br/>10 <b>dinner -- I'm trying to word this -- that</b><br/>11 <b>prior to you leaving or being terminated</b><br/>12 <b>from Cracker Barrel you had dinner there</b><br/>13 <b>and you had a bad experience and that was</b><br/>14 <b>retaliatory. Was there any other</b><br/>15 <b>experiences or any other things that you</b><br/>16 <b>considered retaliatory or retaliation in</b><br/>17 <b>relation to this claim?</b><br/>18 MS. BUSBY: Object to the<br/>19 form.<br/>20 A. Yes.<br/>21 <b>Q. You can answer.</b><br/>22 A. Yes.<br/>23 <b>Q. Can you elaborate on what</b></p> |
| <p style="text-align: right;">Page 418</p> <p>1 send the documentation.<br/>2 <b>Q. Okay. So you wrote to the</b><br/>3 <b>EEOC and asked them to send you stuff,</b><br/>4 <b>and that's how you got whatever you got?</b><br/>5 A. Yes.<br/>6 <b>Q. Okay. And then on one of the</b><br/>7 <b>things I also read -- and I must be</b><br/>8 <b>crazy, but did you tell me you worked for</b><br/>9 <b>the EEOC?</b><br/>10 A. No. I took a course when I<br/>11 was in the military -- well, after I got<br/>12 out of the military with EEOC. It was an<br/>13 additional duty that I did was -- I was<br/>14 with the Department of Defense.<br/>15 <b>Q. Okay. Just some sort of</b><br/>16 <b>training course or something?</b><br/>17 A. Right.<br/>18 <b>Q. Okay. I thought that I must</b><br/>19 <b>have misunderstood what you said.</b><br/>20 MS. BUSBY: Those are my<br/>21 questions from my notes. Thank you.<br/>22 MS. YORK: Okay. My brain<br/>23 is working a little better now.</p>                                | <p style="text-align: right;">Page 420</p> <p>1 <b>those are?</b><br/>2 A. The documentation, the<br/>3 adverse documentation that I started<br/>4 receiving after inquiring into the<br/>5 investigation itself by Rich Alexander.<br/>6 <b>Q. Had you be written up prior</b><br/>7 <b>to this at Cracker Barrel?</b><br/>8 A. No.<br/>9 <b>Q. So let me be clear. You're</b><br/>10 <b>stating that the documents or the</b><br/>11 <b>write-ups from Rich Alexander you</b><br/>12 <b>considered retaliatory?</b><br/>13 A. Yes.<br/>14 <b>Q. And this is off that. Did</b><br/>15 <b>you discuss with -- what you said</b><br/>16 <b>earlier, that Tommy made a comment that</b><br/>17 <b>no black man was going to tell him what</b><br/>18 <b>to do because he was here first?</b><br/>19 A. Yes.<br/>20 <b>Q. Was that comment made to you?</b><br/>21 A. No.<br/>22 <b>Q. I'm not sure -- I'm sure that</b><br/>23 <b>you asked him. Who was the comment made</b></p>                  |

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## FREEDOM COURT REPORTING

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: right;">Page 421</p> <p>1 to?</p> <p>2 A. Linda Ogborne.</p> <p>3 Q. And how were you made aware</p> <p>4 that this statement was made?</p> <p>5 A. She told me that the comment</p> <p>6 was made but that she had already</p> <p>7 discussed it with Rich Alexander.</p> <p>8 Q. And did you later discuss the</p> <p>9 comment with Rich?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And what was his</p> <p>12 response to this comment?</p> <p>13 A. That he would handle it.</p> <p>14 Q. And do you know, in fact,</p> <p>15 whether, in fact, he did handle it?</p> <p>16 A. No.</p> <p>17 Q. No, you do not know?</p> <p>18 A. No, I don't know.</p> <p>19 MS. YORK: Okay. And I'm</p> <p>20 going to go back to Exhibit 9. This was</p> <p>21 you said Linda Byrdsong or L. Byrdsong.</p> <p>22 You don't know what her name is?</p> <p>23 MS. BUSBY: Are you asking</p> | <p style="text-align: right;">Page 423</p> <p>1 Q. Did you discuss all the</p> <p>2 racial slurs that you witnessed while you</p> <p>3 were at Cracker Barrel?</p> <p>4 MS. BUSBY: Object to the</p> <p>5 form.</p> <p>6 A. Yes.</p> <p>7 Q. Including the statements made</p> <p>8 by Bill, the vendor, and other third</p> <p>9 parties?</p> <p>10 MS. BUSBY: Object to the</p> <p>11 form.</p> <p>12 A. Yes.</p> <p>13 Q. Do you know why she didn't</p> <p>14 include those statements in her intake</p> <p>15 notes?</p> <p>16 A. No.</p> <p>17 MS. BUSBY: Object to the</p> <p>18 form.</p> <p>19 MS. YORK: Okay. I think</p> <p>20 that's it unless -- I think that's it.</p> <p>21 MS. BUSBY: I have one</p> <p>22 question, and it may not even be a</p> <p>23 question. Would you read me her first</p> |
| <p style="text-align: right;">Page 422</p> <p>1 me? I don't know her name.</p> <p>2 MS. YORK: I thought you said</p> <p>3 Linda Byrdsong, but it's just L.</p> <p>4 Byrdsong.</p> <p>5 MS. BUSBY: No, he said Linda</p> <p>6 and I said are you talking about Ms.</p> <p>7 Byrdsong?</p> <p>8 Q. (By Ms. York) Okay. Was it</p> <p>9 Linda Byrdsong?</p> <p>10 A. I don't know her. She just</p> <p>11 spelled the last name. I didn't say a</p> <p>12 first name. I don't know her.</p> <p>13 Q. You said you had a two-hour</p> <p>14 meeting with the EEOC. Was the two-hour</p> <p>15 meeting with Ms. Byrdsong?</p> <p>16 A. Yes.</p> <p>17 Q. And during the two-hour</p> <p>18 meeting, you discussed a lot of things</p> <p>19 regarding your employment with Cracker</p> <p>20 Barrel?</p> <p>21 A. Yes.</p> <p>22 MS. BUSBY: Object to the</p> <p>23 form.</p>                           | <p style="text-align: right;">Page 424</p> <p>1 question?</p> <p>2 (Record read.)</p> <p>3</p> <p>4 RE-EXAMINATION</p> <p>5 BY MS. BUSBY:</p> <p>6 Q. I've got one question. The</p> <p>7 dinner that your lawyer asked you about</p> <p>8 and that you testified about, that</p> <p>9 happened after you were terminated from</p> <p>10 Cracker Barrel, correct?</p> <p>11 A. Yes.</p> <p>12 MS. BUSBY: Thank you.</p> <p>13 MS. YORK: And that's fine to</p> <p>14 clarify. I did mean after. I didn't</p> <p>15 mean prior to termination.</p> <p>16 MS. BUSBY: Yeah.</p> <p>17</p> <p>18 FURTHER DEPONENT SAITH NOT</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>                                                                                                                                     |

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## FREEDOM COURT REPORTING

Page 425

1 CERTIFICATE

2  
3 STATE OF ALABAMA)  
4 JEFFERSON COUNTY)

5  
6 I hereby certify that the above  
7 and foregoing deposition was taken down  
8 by me in stenotype, and the questions and  
9 answers thereto were transcribed by means  
10 of computer-aided transcription, and that  
11 the foregoing represents a true and  
12 correct transcript of the testimony given  
13 by said witness upon said deposition.

14 I further certify that I am  
15 neither of counsel nor of kin to the  
16 parties to the action, nor am I in  
17 anywise interested in the result of said  
18 cause.

19  
20  
21  
22  
22 TANYA D. CORNELIUS  
23  
23

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**367 VALLEY AVENUE**  
**(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660**

**PLTF DWIGHT RODGERS  
DEPOSITION EX. 1**

6-13-07  
Rodgers

Moore Ted 402

From: Medoff Burt 402  
Sent: Monday, June 24, 2002 5:21 PM  
To: Moore Ted 402  
Subject: FW: Monster Resume #15097421 Associate Restaurant Manager FLOTRES061002BM  
Monster Job #15063351

## -----Original Message-----

From: DNRODGG@YAHOO.COM [mailto:DNRODGG@YAHOO.COM]  
Sent: Friday, June 21, 2002 6:39 PM  
To: Medoff Burt 402  
Subject: Monster Resume #15097421 Associate Restaurant Manager  
FLOTRES061002BM Monster Job #15063351

Monster resume #15097421  
"Professionalism First"  
Job ref code FLOTRES061002BM  
Monster job #15063351

Name: DWIGHT RODGERS  
Street: [REDACTED]  
City/Town: STONE MOUNTAIN  
State: GA  
Postal Code: 30083  
Country: US  
Phone Number: 770-[REDACTED]  
Fax Number: 770-[REDACTED]  
Email: DNRODGG@[REDACTED].COM  
Relocate: Will Relocate  
Salary Requirements: 44000 USD/year  
Work Requirements: Full-Time, Employee  
Education: Bachelor's Degree  
Work Status: US I am authorized to work in this country for any employer.

## DWIGHT RODGERS

[REDACTED]  
STONE MOUNTAIN, GA 30083  
US  
DNRODGG@YAHOO.COM  
Primary Phone: 770-[REDACTED]  
Secondary Phone: 770-[REDACTED]  
Mobile: 678-595-6174  
Fax: 770-469-4062  
"Professionalism First"  
Resume #15097421

## OBJECTIVE

To obtain a position in management with your company that would give me the opportunity of advancement to use the skills and knowledge I have obtained while working in the restaurant management field.

## TARGET JOB

Target Job Title: GENERAL MANAGER  
Alternate Target Job Title: MULTI-UNIT MANAGER

Desired Job Type: Employee  
 Desired Status: Full-Time  
 Desired Salary: 44,000.00 USD Per Year  
 Site Location: No Preference  
 Description of my perfect job:

One that would allow to advance to a senior management position by implementing and developing my managerial traits and knowledge

Career Level: Management (Manager/Director of Staff)

Date of Availability: Immediately

#### TARGET COMPANY

Company Size: No Preference

Category: Restaurant and Food Service

Description of my ideal company:

One that promotes a continued education and allows it's employee's the chance to advance and demonstrate their abilities.

#### TARGET LOCATIONS

Relocate: Yes

US

#### WORK STATUS

US I am authorized to work in this country for any employer.

#### EXPERIENCE

8/2001 - Present RTM Southeast Incorporated Atlanta, Georgia  
 General Manager

\*Manage 2 assistant managers and 20 team members.

\*Control food cost and inventory accountability.

\*Interview, select and develop restaurant personnel.

\*Maintain In-Unit P&L, General Ledger reconciliation and budgeted sales.

\*Designed and implemented the local store marketing program.

\*Completed performance reviews on subordinate managers and team members.

6/1999 - 8/2001 Bojangles Restaurant Inc. Martinez, Georgia

Training Unit Director

\*Implemented company training program with new management candidates and restaurant staff \*Responsible for earning and maintaining phase I and II training and certification of restaurants

\*Train area management staff in restaurant operating procedures and certification

\*Interview, select and develop management trainee candidates.

\*Maintained P&L's and implemented yearly budget.

\*Implement and managed the local store marketing program

6/1998 - 5/1999 Bojangles Restaurant Inc. Greenwood, South Carolina

Unit Director

\*Operated shifts without supervision.

\*Interviewed, selected and developed restaurant level personnel.

\*Implemented training course for new restaurant personnel.

\*Established restaurant goals and budget.

\*Completed performance reviews.

\*Controlled food cost and inventory.

2/1997 - 5/1998 Athens Daily News Athens, Georgia

District Manager

\*Supervised the delivery and sales of newspapers on district 18.

\*Promoted sales of company paper through cold calling and route maintenance.

\*Maintained customer log of stops and starts for a timely delivery of paper stops and starts.

10/1995 - 12/1997 Prestige Staffing/Merchandising Services Athens, Georgia

Operating Partner/Owner

\*Recruited and trained personnel to assist clients with personnel shortages for various positions.

\*Managed the work performance of company temporary personnel.

\*Negotiated contracts for the hiring of services personnel and their salaries.

\*Coordinated the marketing and advertising for recruitment of company services

10/1992 - 3/1995 PIA Merchandising Company Inc. Clear Water, Florida



**Area Manager**

- Managed 8 supervisors and 65 merchandisers in the implementing of company plan-o-grams.
- Implement the training program for new projects.
- Completed performance reviews on supervisors.
- Conducted Quality Assurance inspections on completed assignments.
- Managed the administrative office hiring of temporary staff personnel.

**EDUCATION**

Cochise College US-Arizona-Sierra Vista,  
Bachelor's Degree  
Completed 1 of my 3.5 years. Relocated due to military spouse.

University of Maryland US-Maryland-College Park  
Bachelor's Degree  
Completed 1.5 years of my 3.5 years of college, relocated with military spouse.

Commonwealth College US-Virginia-Norfolk  
Bachelor's Degree  
Completed 1 year of my 3.5 years of college

**SKILLS**

Skill Name Skill Level Last Used Experience  
Serve Safe certified and instructor qualified Expert Currently used 6 years

**REFERENCES**

Mr. Michael Schuller Bojangles Restaurant Inc. Area Manager  
Phone Number: 803-  
Reference Type: Professional

Deborah Dykes Athens Daily News Circulation Director  
Phone Number: 800-  
Reference Type: Professional

Mr. Floyd Baker PIA Merchandising Company Inc. President of Operations  
Phone Number: 800-  
Reference Type: Professional

James Rundell RTM Incorporated Area Supervisor  
Phone Number: 770-  
Reference Type: Professional

James Rundell RTM Incorporated Area Supervisor  
Phone Number: 770-  
Reference Type: Professional

**ADDITIONAL INFORMATION**

Completed the Equal Employment Opportunity Officers course. Worked as a Equal Employment Opportunity Specialist for 3 years

**PLTF DWIGHT RODGERS**  
**DEPOSITION EX. 2**

Evaluation View

Page 1 of 13  
14

## Associate Performance Evaluation

Employee Name: RODGERS DWIGHT N  
Employee ID: 364639  
Employee Position: GM0237  
Evaluator: ALEXANDER, RICH A  
Evaluator ID: 96880  
Evaluator Position: RDM015  
Evaluation: Eval 1 of 2005

## Review dates

Evaluation End Dates for Fiscal 2005

Eval 1 - 01/28/2005

- 1) All employees who are evaluated will receive a signed paper copy of their own evaluation.
- 2) Evaluators will send evaluations to the home office HRIS department.

**DEFENDANT'S  
EXHIBIT**

2 Rodgers

Evaluation View

Page 2 of 13

Objective 1: Achieve and maintain fully staffed stores with high quality management and hourly employees. Process Date 4-5-2005 12:49:15

| Eval    | Rating                                | Category Scales Results from Qtrly PM                                                                                                                                                                                                                    | Focus Area    |
|---------|---------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| Eval 1> | 4: Exceeds Standards: (0.14% to 0.2%) | 1) Meet overtime % related to total labor cost<br>5: Role Model: (0.13% or less)<br>4: Exceeds Standards: (0.14% to 0.2%)<br>3: Meets Standards: (0.21% to 0.26%)<br>2: Needs Improvement: (0.27% to 0.3%)<br>1: Unacceptable: (0.31% or greater)        | Strength      |
| Eval 1> | 5: Role Model: (98. or less)          | 2) Achieve hourly employee turnover goal (Goal = 115% annualized)<br>5: Role Model: (98. or less)<br>4: Exceeds Standards: (99 to 109.)<br>3: Meets Standards: (110 to 120.)<br>2: Needs Improvement: (121 to 145.)<br>1: Unacceptable: (146 or greater) | Strength      |
| Eval 1> | 2: Needs Improvement                  | 3) Staffing and Retention                                                                                                                                                                                                                                |               |
|         |                                       | 3.1 Develops and implements appropriate staffing and succession plans.                                                                                                                                                                                   | Developmental |
|         |                                       | 3.2 Hires appropriately qualified candidates through effective interviewing and selection processes.                                                                                                                                                     | N/A           |
|         |                                       | 3.3 Follows procedures outlined in the Staffing and Retention guide. Follows Best Practices guidelines for staffing and retention.                                                                                                                       | Strength      |
|         |                                       | 3.4 Creates a work atmosphere where employees feel appreciated and motivated to perform and remain with Cracker Barrel.                                                                                                                                  | Developmental |
|         |                                       | 3.5 Confronts and resolves employee conflicts and morale issues.                                                                                                                                                                                         | Developmental |
|         |                                       | 3.6 Supports and promotes quality of life initiatives.                                                                                                                                                                                                   | N/A           |
|         |                                       | 3.7 Evaluations are performed on a timely basis per the review cycle.                                                                                                                                                                                    | Strength      |
|         |                                       | 3.8 Interviews all applicants and has a good application system in place.                                                                                                                                                                                | N/A           |
|         |                                       | 3.9 Uses designated skill trainers for all positions and meets regularly to improve training.                                                                                                                                                            | N/A           |
| Eval 1> | 2: Needs Improvement                  | 4) Leading, Developing, and Communicating with Others                                                                                                                                                                                                    |               |
|         |                                       | 4.1 Communicates Cracker Barrel mission, vision, values, and goals to employees. Motivates and gains commitment from others. Schedules and holds weekly operational management meetings.                                                                 | Developmental |
|         |                                       | 4.2 Holds managers and staff accountable to Cracker Barrel Standards.                                                                                                                                                                                    | Strength      |



Evaluation View

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|        |                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                             |
|--------|-------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|        | 4.3 Trains managers and employees effectively, using a hands-on approach when necessary.                                                        | N/A                                                                                                                                                                                                                                                                                                                                                                                                         |
|        | 4.4 Provides specific, constructive and well-balanced feedback to retail counterpart, subordinates, peers, and supervisors on an ongoing basis. | N/A                                                                                                                                                                                                                                                                                                                                                                                                         |
|        | 4.5 Effectively manages PAR program to develop employees.                                                                                       | N/A                                                                                                                                                                                                                                                                                                                                                                                                         |
|        | 4.6 Listens actively; promotes and practices open door policy and manager is approachable.                                                      | Developmental                                                                                                                                                                                                                                                                                                                                                                                               |
|        | 4.7 Communicates clearly, candidly, and honestly; avoids ambiguity and mixed messages.                                                          | Developmental                                                                                                                                                                                                                                                                                                                                                                                               |
|        | 4.8 Effectively uses situational leadership skills to communicate with others.                                                                  | N/A                                                                                                                                                                                                                                                                                                                                                                                                         |
|        | 4.9 Participates in MIT and Associate Manager development as outlined in the Associate Manager Development Guide.                               | N/A                                                                                                                                                                                                                                                                                                                                                                                                         |
| Eval_1 | 3: Meets Standards                                                                                                                              | 5: Administering Policies and Procedures                                                                                                                                                                                                                                                                                                                                                                    |
|        | 5.1 Executes Cracker Barrel's orientation and skills training programs for new employees.                                                       | Strength                                                                                                                                                                                                                                                                                                                                                                                                    |
|        | 5.2 Documents and manages discipline and/or performance problems in accordance with Cracker Barrel's policies and procedures.                   | N/A                                                                                                                                                                                                                                                                                                                                                                                                         |
|        | 5.3 Demonstrates a working knowledge of fair employment policies and guidelines (EEO guidelines, hiring minors, OSHA, etc.).                    | Developmental                                                                                                                                                                                                                                                                                                                                                                                               |
|        | 5.4 Supports and executes responsibilities associated with the performance management process.                                                  | N/A                                                                                                                                                                                                                                                                                                                                                                                                         |
|        | 5.5 Leads and supports all Best Practices initiatives.                                                                                          | Strength                                                                                                                                                                                                                                                                                                                                                                                                    |
| Eval_1 | Objective 1 Comment                                                                                                                             | Dwight, as we have discussed on many occasions, your communication and approachability with your subordinates needs improvement. There is an obvious disconnect between you and your team when it comes to your perception of communication and theirs. Continue to work with me and others in our company to come up with strategies to improve communication and mixed messages wether perceived or real. |
|        | Objective 1: Point Subtotal                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                             |
| Eval_1 | Performance Measurements:                                                                                                                       | 18.00                                                                                                                                                                                                                                                                                                                                                                                                       |
|        | Performance Behaviors:                                                                                                                          | 22.40                                                                                                                                                                                                                                                                                                                                                                                                       |



Evaluation View

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Objective 2: Improve guest perceptions. Process Date 4-5-2005 12:49:16

| Eval    | Rating                                             | Category Scales Results from Qtrly PM                                                                                                                                                                                                                                                    | Focus Area    |
|---------|----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| Eval_1> | 2: Needs Improvement: (10 to 12, guest complaints) | 6) Number of guest complaints<br>5: Role Model: (0 to 3, guest complaints)<br>4: Exceeds Standards: (4 to 6, guest complaints)<br>3: Meets Standards: (7 to 9, guest complaints)<br>2: Needs Improvement: (10 to 12, guest complaints)<br>1: Unacceptable: (13 or more guest complaints) | Developmental |
| Eval_1> | 3: Meets Standards: (85 to 88.)                    | 7) Store Visit Report (average of two scores)<br>1: Unacceptable: (74, or below)<br>2: Needs Improvement: (75 to 84.)<br>3: Meets Standards: (85 to 88.)<br>4: Exceeds Standards: (89 to 93.)<br>5: Role Model: (94 or above)                                                            | Strength      |
| Eval_1> | 2: Needs Improvement                               | 8) Building and Maintaining Guest Relations                                                                                                                                                                                                                                              |               |
|         |                                                    | 8.1 Educates and empowers employees to please guests.                                                                                                                                                                                                                                    | N/A           |
|         |                                                    | 8.2 Interacts frequently with guests in dining room (e.g. table visits) and retail store in a friendly, courteous manner.                                                                                                                                                                | Developmental |
|         |                                                    | 8.3 Follows through on commitments made to internal and external guests (e.g. follow through with complaints).                                                                                                                                                                           | Strength      |
|         |                                                    | 8.4 Resolves guest problems or needs using S.T.A.R.S. Sets an example for employees.                                                                                                                                                                                                     | N/A           |
|         |                                                    | 8.5 Provides service to guests that exceeds their needs and expectations.                                                                                                                                                                                                                | Developmental |
|         |                                                    | 8.6 Staff is friendly, smiles, and demonstrates pleasing people practices.                                                                                                                                                                                                               | N/A           |
| Eval_1> | 2: Needs Improvement                               | 9) Planning and Supervising Operations                                                                                                                                                                                                                                                   |               |
|         |                                                    | 9.1 Does accurate sales and labor forecasts. Anticipates and responds to volume fluctuations / bottlenecks and takes appropriate action.                                                                                                                                                 | Strength      |
|         |                                                    | 9.2 Manages multiple tasks and responsibilities simultaneously. Organized and uses day planner effectively. Meets all company and district deadlines.                                                                                                                                    | N/A           |
|         |                                                    | 9.3 Considers employee training, breaks, and special requests when preparing schedules.                                                                                                                                                                                                  | Developmental |
|         |                                                    | 9.4 Uses organizational skills. Prioritizes, delegates, and follows-up to                                                                                                                                                                                                                | N/A           |

Evaluation View

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|                                                                                                                                           |                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |               |
|-------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| maintain a smooth operation.                                                                                                              |                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |               |
| 9.5 Plans shifts using appropriate tools (e.g. PEP Talk, shift cards, production charts, Ally Rally, Red Book) to ensure store readiness. |                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | N/A           |
| 9.6 Determines Behaviors that need improvement; develops and implements goals and plans which successfully address these Behaviors.       |                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Developmental |
| Eval_1>                                                                                                                                   | 3: Meets Standards                                                                                                  | 10) Safety, Security, and Sanitation                                                                                                                                                                                                                                                                                                                                                                                                                                                   |               |
|                                                                                                                                           | 10.1 Follows all HACCP guidelines.                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Developmental |
|                                                                                                                                           | 10.2 Meets all Cracker Barrel asset protection policy, cash management, safety, security, and sanitation standards. |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Strength      |
|                                                                                                                                           | 10.3 Maintains property, building, and equipment function at all times.                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | N/A           |
|                                                                                                                                           | 10.4 Performs regular walk-thrus and holds all employees accountable for safety, security, and sanitation.          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | N/A           |
|                                                                                                                                           | 10.5 Performs all required safety and sanitation inspections and makes adjustments as necessary.                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | N/A           |
|                                                                                                                                           | 10.6 Ensures regular inspection of restrooms.                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | N/A           |
|                                                                                                                                           | 10.7 Monitors dating and rotating shelf-life on boxes and food packages.                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Developmental |
|                                                                                                                                           | 10.8 Makes regular supervised trash runs throughout shift.                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | N/A           |
|                                                                                                                                           | 10.9 Educates and trains hourly staff and other managers on proper safety and security procedures.                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | N/A           |
|                                                                                                                                           | 10.10 Promotes the "clean as you go" policy.                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Strength      |
| Eval_1>                                                                                                                                   | Objective 2 Comment                                                                                                 | Dwight, I am very concerned about your unit's negative sales numbers and negative traffic vs. prior year. I realize you have had competition move in on you. However, we need to out execute the competition and not use this as an excuse. Way too many guest complaints for your unit. You cannot grow your business with this many complaints from the guest that take the time to complain. I need to see manager presence in the dining room. Are you role modeling the behavior? |               |
| Objective 2: Point Subtotal                                                                                                               |                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |               |
| Eval_1                                                                                                                                    | Performance Measurements:                                                                                           | 8.40                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |               |
|                                                                                                                                           | Performance Behaviors:                                                                                              | 20.80                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |               |



Evaluation View

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Objective 3: Improve store margins. Process Date 4-5-2005 12:49:17

| Eval    | Rating                                           | Category Scales Results from Qtrly PM                                                                                                                                                                                                                           | Focus Area    |
|---------|--------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| Eval_1> | 4: Exceeds Standards: (-0.29 to -0.11)           | 11) Achieve restaurant labor goal<br>5: Role Model: (less than or equal to -0.3)<br>4: Exceeds Standards: (-0.29 to -0.11)<br>3: Meets Standards: (-0.10 to 0.20)<br>2: Needs Improvement: (+0.21 to +0.49)<br>1: Unacceptable: (greater than or equal to +0.5) | Strength      |
| Eval_1> | 1: Unacceptable: (greater than or equal to +0.4) | 12) Achieve food cost goal<br>5: Role Model: (less than or equal to -0.3)<br>4: Exceeds Standards: (-0.29 to -0.1)<br>3: Meets Standards: (-0.09 to +0.09)<br>2: Needs Improvement: (+0.1 to +0.39)<br>1: Unacceptable: (greater than or equal to +0.4)         | Developmental |
| Eval_1> | 2: Needs Improvement                             | 13) Maintaining Sales and Quality of Operation                                                                                                                                                                                                                  |               |
|         |                                                  | 13.1 Manages production, labor, and other costs using Cracker Barrel tools to achieve planned targets.                                                                                                                                                          | Developmental |
|         |                                                  | 13.2 Follows company mandatory food cost requirements.                                                                                                                                                                                                          | Developmental |
|         |                                                  | 13.3 Increases sales and profitability through shift execution and appropriate sales-building strategies (using a seating index and appropriate staffing).                                                                                                      | N/A           |
|         |                                                  | 13.4 Maximizes productivity of self and others.                                                                                                                                                                                                                 | N/A           |
|         |                                                  | 13.5 Takes initiative to solve operational problems that arise.                                                                                                                                                                                                 | Developmental |
|         |                                                  | 13.6 Labor - schedules properly for the volume to hit the targeted goals.                                                                                                                                                                                       | Strength      |
|         |                                                  | 13.7 Demonstrates an understanding of the impact of all decisions on Cracker Barrel profits.                                                                                                                                                                    | Developmental |
|         |                                                  | 13.8 Uses data to make appropriate decisions to maximize sales.                                                                                                                                                                                                 | N/A           |
|         |                                                  | 13.9 Adheres to Cracker Barrel product and guest service standards.                                                                                                                                                                                             | N/A           |
|         |                                                  | 13.10 Adheres to Cracker Barrel food quality and recipe standards.                                                                                                                                                                                              | N/A           |
|         |                                                  | 13.11 Trains and maintains proper procedures on guest check, exception reporting, service comps, manager unknowns, voids, and meal policies.                                                                                                                    | N/A           |
|         |                                                  | 13.12 Has proper (minimum standards) levels of small wares in service to assure a smooth operation.                                                                                                                                                             | N/A           |
|         |                                                  | 13.13 Partners with management team to reduce shrinkage.                                                                                                                                                                                                        | N/A           |

Evaluation View

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|                             |                                                                                       |                                                                                                                                                                                                                                                                                                                                                              |
|-----------------------------|---------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                             | 13.14 Reduces shrinkage through the use of the "Effective Shrinkage Management" tool. | N/A                                                                                                                                                                                                                                                                                                                                                          |
|                             | 13.15 Ensures compliance to Retail Audit Procedures.                                  | N/A                                                                                                                                                                                                                                                                                                                                                          |
|                             | 13.16 Follows Asset Protection Policy.                                                | N/A                                                                                                                                                                                                                                                                                                                                                          |
| Eval_1>                     | Objective 3<br>Comment                                                                | Dwight, good job on managing labor costs for the first half of fiscal '05. Food management is a different issue. Very inconsistent on your ability to manage this cost control. Are you talking and walking food cost focus and expectations? The tools are there for your use. Are you holding your managers and staff accountable for hitting the target?? |
| Objective 3: Point Subtotal |                                                                                       |                                                                                                                                                                                                                                                                                                                                                              |
| Eval_1                      | Performance Measurements:                                                             | 8.00                                                                                                                                                                                                                                                                                                                                                         |
|                             | Performance Behaviors:                                                                | 9.60                                                                                                                                                                                                                                                                                                                                                         |

Evaluation View

Page 8 of 13

Objective 4: Exceed the Financial Plan Process Date 4-5-2005 12:49:18

| Eval                        | Rating                                          | Category Scales Results from Qtrly PM                                                                                                                                                                                                                                                                                                                                                       | Focus Area    |
|-----------------------------|-------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| Eval_1>                     | 1: Unacceptable: NOI v/s LY: (0%)               | 14) Net Operating Income (NOI) v/s Last Year NOI<br>1: Unacceptable: NOI v/s LY: (0%)<br>2: Needs Improvement: NOI v/s LY: (+0.01% to +7.5%)<br>3: Meets Standards: NOI v/s LY: (+7.51% to +15.0%)<br>4: Exceeds Standards: NOI v/s LY: (+15.1% to +20%)<br>5: Role Model: NOI v/s LY: (+20.0% or greater)                                                                                  | Developmental |
| Eval_1>                     | 2: Needs Improvement Rsales: (-3.59% to +3.39%) | 15) Real Net Restaurant Sales Growth<br>1: Unacceptable Rsales: (-3.6% or below)<br>2: Needs Improvement Rsales: (-3.59% to +3.39%)<br>3: Meets Standards Rsales: (+3.4% to +5.49%)<br>4: Exceeds Standards Rsales: (+5.5% to +6.09%)<br>5: Role Model Rsales: (+6.1% or greater)                                                                                                           | Developmental |
| Eval_1>                     | 1: Unacceptable: (-3.6% or below)               | 16) Achieve Retail Sales v/s Last Year<br>1: Unacceptable: (-3.6% or below)<br>2: Needs Improvement: (-3.59% to -0.1%)<br>3: Meets Standards: (-0.09% to +3.9%)<br>4: Exceeds Standards: (+3.91% to +5.99%)<br>5: Role Model: (+6% or greater)                                                                                                                                              | Developmental |
| Eval_1>                     | Objective 4 Comment                             | Dwight, a very disappointing first half of fiscal '05 in the areas of sales growth both restaurant, retail and net operating income vs. prior year. You need to have a great finish to the last half of fiscal '05 in order to bring the year in to the expectations of myself and our company. Focus on the 3 region 2 priorities for the remainder of this year and let's make it happen. |               |
| Objective 4: Point Subtotal |                                                 |                                                                                                                                                                                                                                                                                                                                                                                             |               |
| Eval_1                      | Performance Measurements:                       | 7.20                                                                                                                                                                                                                                                                                                                                                                                        |               |
|                             | Performance Behaviors:                          | Subtotal N/A                                                                                                                                                                                                                                                                                                                                                                                |               |



Evaluation View

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## 2005: Performance Summary

Process Date 4-5-2005 12:49:19

| Objective No                                       | Performance Areas         | Eval 1                                         |
|----------------------------------------------------|---------------------------|------------------------------------------------|
| Objective 1                                        | Performance Measurements: | 18                                             |
|                                                    | Performance Behaviors:    | 22.4                                           |
| Objective 2                                        | Performance Measurements: | 8.4                                            |
|                                                    | Performance Behaviors:    | 20.8                                           |
| Objective 3                                        | Performance Measurements: | 8                                              |
|                                                    | Performance Behaviors:    | 9.6                                            |
| Objective 4                                        | Performance Measurements: | 7.2                                            |
|                                                    | Performance Behaviors:    | —                                              |
| Current Evaluation Performance Measurements Score: |                           | 41.6                                           |
| Current Evaluation Performance Behaviors Score:    |                           | 52.8                                           |
| Current Evaluation Overall Performance Rating:     |                           |                                                |
|                                                    |                           |                                                |
| Overall Annual Performance Measurements Score:     |                           | 41.6                                           |
| Overall Annual Performance Behaviors Score:        |                           | 52.8                                           |
|                                                    |                           |                                                |
| 2005 Overall Annual Rating:                        |                           | 2                                              |
|                                                    |                           | 1 = 19.0000 - 29.4999<br>2 = 29.5000 - 49.4999 |

Evaluation View

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2005 Rating Scale:

3 = 49.5000 - 69.4999

4 = 69.5000 - 89.4999

5 = 89.5000 - 100.0000

Evaluation View

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## Individual Development Program

Process Date 4-5-2005 12:49:19

| Developmental Plan | Resources needed | Method to Measure | Follow-up Date |
|--------------------|------------------|-------------------|----------------|
| Eval 1             |                  |                   |                |
| see attached IDP   |                  |                   |                |
|                    |                  |                   |                |
|                    |                  |                   |                |

|                     | Current Recommendations (check)                          | Comments                                          |
|---------------------|----------------------------------------------------------|---------------------------------------------------|
| Career Development: | Remain in current position for continued development -X- |                                                   |
|                     | Developmental Projects -X-                               | improve communication and vision with your staff. |
|                     | Promote                                                  |                                                   |
|                     | Willing to relocate                                      |                                                   |
|                     | Special interests                                        |                                                   |

Evaluation View

Page 12 of 13

Eval - 2005 Performance Comments and Signatures

Supervisor's Comments:

Dwight, a very difficult and disappointing first half of fiscal '05. Sales and traffic are down on both sides of our business. This greatly affect the middle of the P & L along with mismanagement of some of our basic cost controls. Food cost is out 0.59% after the first six months. Net operating income is down -0.41% compared to prior year. You did bring labor in at -0.12%. Good Job!!

Dwight, even though the above mentioned numbers are very concerning, I am more concerned with the lack of a cohesive committed management team at your unit. We have had many conversations about your subordinate managers frustrations with your leadership in the following areas: >Mutual respect >Credibility >Work Ethic >Passion for the position you are in >Your vision statement and other key leadership traits. Dwight we cannot fix the top line and the middle of the P & L until you get your team behind you and set clear direction for your unit.

You have given me a plan of action that includes reaching out to others in our organization for suggestions that will improve your leadership skills. This is good step but first you must realize there is a serious problem and be very self analytical in how you are going to change some behaviors to regain the trust, respect and credibility with your managers. You must become more approachable, listen to understand, give clear direction and planning skills need improving.

Dwight, you are very intelligent, articulate and you know Cracker Barrel. If you follow your plan, listen and quit being so defensive/argumentative when confronted you can succeed as the GM of unit #237 Gardendale. You have my 100% support in your endeavors to make some very important behavior changes.

I feel you can make it happen.

Employee's Comments:

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Evaluation View

Page 13 of 13

Employee's  
Signature: \_\_\_\_\_

Supervisor's  
Signature: \_\_\_\_\_

Second Level Review  
Signature: \_\_\_\_\_

**Definition for Second Level Review and Signature**

1. Associate Manager and Senior Associate Manager evaluations performed by General Manager, the Second Level Review is the District Manager.
- OR-
2. General Manager and Retail Manager evaluations performed by District Manager, the Second Level Review is the Regional Vice President.

"I accept and understand Cracker Barrel's Equal Employment Opportunity policy, Anti-harassment policy, and Open Door policy, and that employees may utilize the company's toll free number (1-888-648-DOOR) to report complaints or violations of these policies. I understand that the company may be held responsible for acts of harassment that I commit, condone, tolerate, or fail to investigate. I further understand that if I violate any aspect of these policies that I will be subject to immediate discipline, up to and including termination, and that I can be sued and may be held personally liable for my acts or omissions. Therefore, I acknowledge and confirm that I am not aware of any observed, alleged, experienced, or reported harassment, including discrimination or sexual harassment. I commit that I will report any such knowledge or awareness of possible violations of these policies to my immediate supervisor or the Employee Relations Department."

Employee signature: \_\_\_\_\_

Process Date 4-5-2005 12:49:19



**PLTF DWIGHT RODGERS**  
**DEPOSITION EX. 3**

**Based on our conversation, I have prepared an action plan to address gaining respect quickly; building trust and credibility.**

**How To:**

Establish and communicate personal standards/expectations to guide you through all situations. Learn as much as possible about the person you are about to meet, and use those facts in your first meeting. Be prepared with what you will be discussing so you do not waste the other's time. Use language appropriate to the listener. Ask for the other person's opinions or ideas. Follow up your meetings with a memo or thank-you note. Dress for success. Speak only when you have something of value to offer; project confidence and competence. Be sure of your facts and figures. If you do not know the answer to a question, do not bluff; offer to get the answer quickly and precisely. Do not repeat gossip. Listen and respond with empathy; maintain the other person's self-esteem. Be yourself.

**Ways To Learn Additional "How Tos":**

**On-Job**

When you have made a poor impression, find out exactly why. Analyze the qualities in others that impress you. Study videotapes of yourself as if through another person's eyes. Be aware of the behavior and appearance of people you meet to determine what adds to or detracts from a favorable impression

**Readings**

*What Every supervisor Should Know* by Bitel and Newstrom.

*Management of Organizational Behavior: Utilizing Human Resources* by Hersey and Blanchard.

*Becoming a Manager: Mastery of a New Identity* by Hill.

*Leadership: The Inner Side of Greatness* by Koestenbaum.

*The Essence of Leadership: The 4 Keys to Leading Effectively* by Locke and Latham.

*Super Leadership* by Manz.

**Programs**

"Building Credibility, Rapport and Trust" - Achievement Center, Inc.

"Client Centered Selling" - MOHR Financial Services

"Internal Consulting" - Personnel Decisions, Inc.

"The Credibility Factor" - TPG/Learning Systems

"Producing Results With Others" - The TACOM Corporation

**Ways To Practice:**

Notice how quickly you establish rapport with others during social gatherings; work to make the connection faster. Choose important people whom you want to meet, plan what you will do at the first meeting, and have a friend introduce you; after the meeting, get feedback from the friend on how you came across. Write down the reasons why you trust someone you know; strengthen these qualities in yourself. Make a committed and enthusiastic effort to satisfy internal and external customers' requests.

**How To Measure:**

Get feedback from your manager and others on what your reputation is in these areas. Have someone you trust solicit feedback from a person you met recently. Ask a friend how he/she would rate your performance in a recent situation. Ask your toughest critic how he/she would rate your performance in

**DEFENDANT'S  
EXHIBIT**

3 Rodgers

Rodgers v. Cracker Barrel  
Def. Resp. to RFP 00001

a recent situation. Co-workers will confide in you, ask your opinion, and refer others to you as a source of information more often.

**How To Use This Talent More:**

Volunteer for any project that includes representing your organization to the public. Identify a project in trouble that could be rescued with the help of this strength. Be the spokesperson for your group. Offer your help to two parties who are at a standstill.

**PLTF DWIGHT RODGERS**  
**DEPOSITION EX. 4**

-----Original Message-----

**From:** Alexander Rich 8015

**Sent:** Monday, April 04, 2005 9:12 PM

**To:** Phillips Ron 9802

**Subject:** 04-04-05 Dwight Rogers' Action Plan

Ron, here is Dwight's action plan. Rich A.

-----Original Message-----

**From:** 237 General Manager

**Sent:** Saturday, April 02, 2005 12:19 AM

**To:** Alexander Rich 8015

**Subject:** Document1

Rich,

I am forwarding this response per our conversation. I have voice mails out to others who were giving me some feed back on measures I could take to resolve the perception matter here and I may be forwarding other information to you as well

If this is not to your satisfaction, please let me know.

Dwight

**DEFENDANT'S  
EXHIBIT**

4 Rogers

Rodgers v. Cracker Barrel  
Def. Resp. to RFP 00003



To: Rich Alexander,  
DM, District # 15

From: Dwight Rodgers  
GM, Unit 237  
Gardendale, AL

Per your request, I am responding to the letter of concern that you and I discussed on March 26, 2005 ref: the manager's meeting held on March 21, 2005.

In order to begin the process of self-evaluation, I have enlisted several outside personnel's assistance in the overall methods of how one would be able to start a measure of this nature.

In conversation with all parties enlisted, I have decided to try several methods to work not only on the traits that make one a great leader, but also the traits that makes one assessable, receptive and a valued team player.

On March 31, 2005 I will be conducting a survey of all hourly employees asking for their honest feedback on their perception of my leadership abilities. This survey will only contain 5 questions and will not ask the employee for their names.

On April 5, 2005 instead of our standard manager's meeting, We will be holding the manager's meeting off site to allow us the time and surroundings were the managers will be able to give me feedback without being disturbed with my undivided attention. Your presence is requested.

I have also solicited the assistance of Mr. Kevin Dilley and Dan McChurch from Home Office Management Development Department on different exercises that I may be able to use to break the communication barrier between myself and the management team of this unit.

I will also be meeting with the entire Shift Leading team on 04/13/05 from 3-5p once a month were we will be going over the Shift Leader Training Workbook as a group in order to ensure all members of the supervisory team are on the same page.

As it has been my motivation since the day I inquired / pursued employment with this company, that at no time would I not give 110% and I will not start now. I do understand that at some point in our career we have to make choices and changes in order to ensure that the overall mission of the team is met and I'm willing to do/continue to do that. I hope this plan of action will be that which this unit will need in order to operate as one and not be divided as we are operating currently.

Any suggestions, concerns or feedback that you may have in reference to any of the ideas placed within, will definately be appreciated.

Dwight N. Rodgers  
GM, Unit 237

Rodgers v. Cracker Barrel  
Def. Resp. to RFP 00004

**PLTF DWIGHT RODGERS  
DEPOSITION EX. 5**

**CHARGE OF DISCRIMINATION**

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐ FEPA☒ EEOC**130-2005-06620**

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

**Mr. Dwight N. Rodgers, Sr.**

Home Phone No. (Incl Area Code)

**(334) [REDACTED]**

Date of Birth

**[REDACTED]-1966**

Street Address

City, State and ZIP Code

**[REDACTED], Montgomery, AL 36117**

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

**CRACKER BARREL RESTAURANT INC**

No. Employees, Members

**500 or More**

Phone No. (Include Area Code)

**(334) 244-1085**

Street Address

City, State and ZIP Code

**9191 Boyd Cooper Pkwy, Montgomery, AL 36117**

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es))

☒ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN  
☒ RETALIATION ☐ AGE ☐ DISABILITY ☐ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

**03-03-2005****09-03-2005**☐ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I began my employment with the employer named above as a Manager on July 22, 2002. I was promoted to the position of General Manager during September of 2004. On March 3, 2005, a White Associate made a derogatory statement about Blacks which I found to be offensive. An investigation was to be scheduled into the matter. However, I was informed by the District Manager, Richard Alexander that I could not take any corrective action regarding this employee. The finding of the investigation was never revealed to me, although I questioned the finding on several occasions. Thereafter, I was not allowed to discipline any manager according to established policy. I am not aware of any White General Manager being denied this privilege. Upon my complaining of the offensive comment and the status of the investigation, I began to be given several disciplinary actions regarding my job performance. On September, 3, 2005, I was given a final warning regarding my job performance and discharged. I was informed that I was discharged for performance below standards of the employer's General Managers. I am not aware of any other General Manager who has complained of matters he found to be racially offensive. I was the only Black General Manager assigned to Mr. Alexander's district.

I believe that I was discriminated against in violation of Title VII of the 1964 Civil Rights Act, as amended because of my race, Black and in retaliation for my constant inquiry into the status of the investigation of the racially offensive comment.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BY  
(month, day, year)

**Sep 08, 2005**

Date

Charging Party Signature

**DEFENDANT'S  
EXHIBIT****5 Rodgers**

**PLTF DWIGHT RODGERS  
DEPOSITION EX. 6**



## Employee Counseling Report

Employee Name: Dwight RodgersEmployee #: 364639Store #: 574Job Status: General ManagerPAR Level: N/ASupervisor's Name: Rich A. AlexanderSupervisor's Employee #: 96880Written or Verbal: Final WrittenDate: 08-12-05Time: 3:30pm

### Problem/Situation:

Dwight, a very disappointing visit to your unit on Friday, August 12th. I arrived at approximately 9:15am to find yourself and two other managers on duty. When I did my walk through I pointed out and had you discard \$233.00 of food items that were either not labeled or had passed their hold times. Dwight food availability, quality and food safety has always and will always be a top priority in our company. It is unacceptable that both your opening managers and yourself did not do a walk through and did not catch these issues with food quality and/or food safety. Some of these food items were out of date the day before and were being served to our guests. When I sat down and expressed my concerns, you immediately started to blame your associates. Dwight, your associates are performing up to the standards you have both role modeled and accepted.

Dwight, we have spoken many times about you finding your operator's hat and setting clear expectations, coaching and training to the Cracker Barrel's operational standards, and then following up and holding your managers and employees accountable to deliver these standards. And most importantly, you must role model the behaviors in order to set the example to others in your unit.

### Summary/Corrective Action Plan:

Dwight, your unit is failing in the following operational areas: 1. Sales are well below expectation and continue to decline weekly. 2. 29 guest complaints in 11 weeks of operation. 3. Food cost over goal by greater than 5% for the last two months. 4. In the 11 weeks since opening, you have yet to meet the "New Store" weekly labor efficiency goal. 5. I have had many conversations with you in regards to you or your managers failing to perform required call ins and/or required e-mails/faxes.

Dwight, immediate improvement regarding the current operational issues mentioned above is expected. Failure to make and sustain these improvements will result in further disciplinary action up to and including termination..

**DEFENDANT'S  
EXHIBIT**

6

Rodgers

Plaintiff Doc's 000168  
Rodgers v. CB

Dwight Rodgers Docs  
Prod. to EEOC 000005



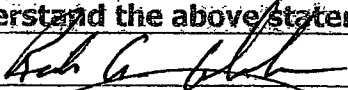
Policy Statement: Yes ☐ No ☐

Information concerning Employee Assistance Program? Yes ☐ No ☐

Employee Statement:

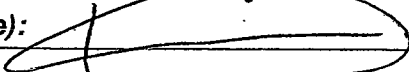
I have read and understand the above statement.

Signed (Manager):



Date: 8/20/05

Signed (Employee):



Date: 8/20/05

Original -- Supervisor; Copy -- Employee

PAR 4/22/99

Plaintiff Doc's 000167  
Rodgers v. CB

Dwight Rodgers Docs  
Prod. to EEOC 000006

**PLTF DWIGHT RODGERS**  
**DEPOSITION EX. 7**

**From:** 574 General Manager  
**Sent:** Sunday, July 31, 2005 6:56 PM  
**To:** Phillips Ron 9802  
**Cc:** Alexander Rich 8015; Murchison Laura 9702; Adkins Mike 394  
**Subject:** RE: 07-31-05 FW: 07-24-05 Guest Relations Issue - Store # 574

**DEFENDANT'S  
EXHIBIT**

7 Rodgers

Ron,  
I apologize for the delay in response.

In response to your email dated 07/24/05, With the initial opportunities that this unit has faced since day one.."hiring, staffing, management selection and management dismissal" I have taken the following steps to generate consistency within the unit. In reviewing the guest complaints and noticing the levels of inconsistency with the staff, I decided to have a mass meeting with the staff to get out as much information in the least amount of time. On 07/26/05 and 07/27/05 Teresa Cameron (Retail Manager) and myself held meetings with the staff to discuss standards, expectations, guest complaints, guest service, DOJ, attendance, productivity and the overall performance of the unit. In narrowing down the information gap I have also held one on ones with the management staff in reference to the same. Some of the things that I've done with the management team is role played S.T.A.R.S. with the guest complaints.." how could we have handled this differently"?, Will start taking Manager breaks "when only two managers are on shift only one will break at a time to give floor coverage at all times". I have assigned three managers on the weekend both shifts, one BOH, one FOH and one wait line/host assistance to ensure guest are getting the best service. During this weekend in utilizing this coverage guest comps and discounts has reduced from 7/2 \$150.00, 7/9 \$188.00, 7/16 \$148.00, 7/23 \$72.00 and 7/30 \$18.00. In noticing this change in service and reaction times, my weekend schedule will be from opening shifts with 7am being the latest time in for me until further notice. I recognize that a unit is only as strong as it's leader and until their development/awareness is to par, these measures are necessary. OPERATIONS AND TRAINING HOURLY PERSONNEL: I have requested assistance from the district in getting experienced personnel to spend a weekend with us to help in the continued training of the staff as I continue to develop and increase the awareness of the management team. This started this weekend with Renee (Lisa) Holmes from Decatur joining us for two days (Please thank her for her assistance as I have) working with the grill crew as well as having a set of developed eyes to give feedback on how we can improve in our guest service. She is also scheduled to return in two weeks to assist in coaching, and developing FOH staff. Rich Alexander (DM) has committed to continue to coach and develop me on my performance as the General Manager with constant feedback and Weekly agenda review, "show time spent with developing managers as well as myself". In applying that which I have described above, Operations of the unit will have an immediate impact on guest service and consistency. Overall, I'm constantly pushing the managers to focus on running great shifts one day at a time. Making an impact one shifts day at a time.

Dwight Rodgers  
GM, Unit 574

> -----Original Message-----

> From: Phillips Ron 9802 [mailto:Ron.Phillips@crackerbarrel.com]  
 > Sent: Sunday, July 31, 2005 7:23 AM  
 > To: 574 General Manager  
 > Cc: Frank Monique 7054; Alexander Rich 8015; Adkins Mike 394; Murchison  
 > Laura 9702  
 > Subject: 07-31-05 FW: 07-24-05 Guest Relations Issue - Store # 574  
 >  
 >

> 07-Case 2:06-cv-01067-WKW-SRW Document 17-7 Filed 08/02/2007 Page 32 of 66  
 > Dwight - on 7/24 I sent this request regarding multiple complaints  
 > received the week ending 7/22/05 - Please update me immediately on what  
 > we are doing. I expected feedback by Thursday, 7/27/05.

> Ron Phillips

> -----Original Message-----

> From: Phillips Ron 9802  
 > Sent: Sunday, July 24, 2005 5:58 PM  
 > To: 574 General Manager; Frank Monique 7054; Alexander Rich 8015;  
 > Murchison Laura 9702  
 > Cc: Adkins Mike 394  
 > Subject: 07-24-05 Guest Relations Issue - Store # 574

> Dwight... this is one of nine complaints in the last eight days....  
 > We also had three compliments and apparently a "bogus" complaint from a  
 > non-existent state senator....

> Two complaints mentioned loud music and managers being "unprofessional,"  
 > - see following  
 > Our server was nice enough to call the manager how was nothing but RUDE.  
 > Also, we were sitting close to the kitchen entrance and there was too  
 > much noise coming out. They had a radio in the kitchen playing a very  
 > loud RAP music, and some people were cursing. Not what we want to hear  
 > in a restaurant!!!

> My concerns are that our operation MUST be more consistent! Many of the  
 > seven valid complaints reflect slow service and food issues (quality and  
 > outages). What are we doing to regain our momentum? What are doing to  
 > become more consistent - shift by shift - and guest by guest? Nine  
 > complaints in eight days is unacceptable. We've invested too much money  
 > in this unit to lose our business through inability to operate.

> Please respond to me via email no later than Thursday, 7/27/05 and  
 > detail what we're doing to get OPERATOR consistent...

> Ron

> -----Original Message-----

> From: Guest Relations  
 > Sent: Friday, July 22, 2005 12:37 PM  
 > To: 574 General Manager; 574 Retail Manager; Restaurant Region 2 VP;  
 > Rest DM-District 15; Retail Region 2 VP; Retail DM-District 54  
 > Cc: Turner Bridget 472  
 > Subject: Guest Relations Issue - Store # 574

> Store #: 574 Guest Relations Ticket # 455906 Store #: 574

> Mr George Toumbacaris

> 2500 Halcyon Downs Loop

```
> Montgomery, AL 36117 us
> (334) 279-6121
```

> Status:

> Closed

> Assigned to:

> Danita Lock

> Category:

> Complaints - Service (Bad, Slow, Etc.)

```
> Store #:
```

> 574 - Montgomery, Al (Montgomery, Al 36117)

Incident Date:

07/21/2005 06:00 PM

• Manager Reported Date:

Origin:

Phone

Disposition:

Party Size:

0

Action Taken:

Refund Amt:

Employee Name:

Total Sale Amt:

## Guest Comments

## Questions and Answers

1. Which Cracker Barrel did you visit? Please include City, State, Interstate, & Exit number if known.



>  
> 2. When did you visit us? Date, Time?  
>  
> 3. Would you happen to have a copy of your receipt from that day?  
> Yes  
> 4. Receipt #  
> 001109  
> 5. How many people were in your party?  
> 2  
> 6. Please describe the general nature of your complaint.  
> The Chalkboard as they entered said turkey and dressing 1 veg  
> and a price. They decided they wanted it. Guest said he did not see  
> anything showing it as a lunch special and waiter checked and said they  
> did have a dinner turkey and dressing dinner but not the smaller  
> portions. So they decided to find something else, ruben sandwich and a  
> ham, gb carrot dinner plt. Biscuits were hard as a rock. He asked server  
> for fresher biscuits. 5-6 min later he came back with more but these  
> were hard also. Ast mgr came over and said let me see if we can find you  
> some fresh biscuits. 5-10 min later mgr came back with plate of fresh  
> hot biscuits. And guest said I only wanted one and mgr offered him to  
> take them home and guest declined. Said he was not happy getting the  
> fresh biscuits after he was through with his meal. The fries were stone  
> cold also. They took one dinner off the bill. Cashier seemed  
> indifferent; she was on the phone. Then the gm came out and said you  
> should not have been told the smaller portion was not available it is  
> the same except one veg. After the first time the batch should have been  
> checked and thrown out. He was most gracious and his name was Ralph. At  
> least he was concerned and listened.  
> 7. Food/Food Service - What did the people in your party order to  
> eat?  
> reuben and ham dinner  
> 8. Food/Food Service - Do you remember the name of your server?  
> Yes  
> 9. Please enter his/her name or if not, do you possibly have a  
> description? (approximate age, race, height, weight/build,gender...)  
> 753926 Brian S  
> 10. Food/Food Service - How long were you seated before the server  
> approached your table?  
> 4 minutes  
> 11. Food/Food Service - After placing your order, how long did it  
> take for your food to be delivered?  
> 15-20 minutes  
> 12. Food/Food Service - Do you have a complaint about the way your  
> server treated you?  
> No  
> 13. If yes, please explain.  
> na  
> 14. Were you able to speak with a manager about this experience?  
> Yes  
> 15. If so, do you remember their name or could you describe them?  
> Carlos; them Ralph  
> 16. How did the manager respond?  
> Carlos went thru the motions but Ralph seemed genuinely  
> concerned  
> 17. Were you satisfied with their actions and response?  
> Yes  
> 18. We would like to ask some demographic information. Providing  
> this information is voluntary, and will be used to assist in compliance  
> with federal law. Regardless of whether or not you provide this  
> information, be assured that we will investigate this matter fully.  
> Which of the following best describes your Race?  
> Caucasian  
> 19. Which of the following best describes your age range?  
> 55 and older  
> 20. Why do you think this happened to you?  
> someone was not doing their job, a number of people were not.  
>

**PLTF DWIGHT RODGERS**  
**DEPOSITION EX. 8**



# Employee Counseling Report

8 Rodgers

Employee Name: Dwight Rodgers

Employee #: 364639

Store #: 574

Job Status: General Manager

PAR Level:

Supervisor's Name: Ron Phillips, Rich Alexander

Supervisor's Employee #: \_\_\_\_\_

Written or Verbal: Termination

Date:

Time:

**Problem/Situation:**

Dwight's performance continues to fall below the standards and expectations of the General Manager position. Issues previously discussed with Dwight include:

Dwight's failure to meet required deadlines,

Unacceptable guest complaints, and Dwight's limited responsiveness to address these matters.

A lack of taking personal responsibility to respond to issues needing his attention.

Dwight continuously misses deadlines or does not submit information within required deadlines or in a timely manner. Examples: failure to submit reports for Sales Building calls, failure to submit monthly manager schedule as required, failure to conduct timely employee relations investigations, failure to obtain and/or submit required statements even though repeated requests have been made.

**Summary/Corrective Action Plan:**

For on-going poor performance, Dwight's employment is terminated effective immediately.

Policy Statement: Yes \_\_\_\_\_ No \_\_\_\_\_

Information concerning Employee Assistance Program? Yes \_\_\_\_\_ No \_\_\_\_\_

**Employee Statement:**

Plaintiff Doc's 000163  
Rodgers v. CB

I have read and understand the above statement.

Signed (Manager): *Rich A. White*

Date: 9/3/05

Signed (Employee):

Date:

Original - Supervisor; Copy - Employee

PAR 4/22/99

*Manager Refused to Sign*  
*Monique Frank*

Dwight Rodgers Docs  
Prod. to EEOC 000001

## Documentation of Performance

Dwight Rodgers consistently demonstrates a lack of preparedness, insufficient responsiveness to requests and deadlines, and leadership that does not meet Cracker Barrel's standards for a General Manager.

### Lack of Preparedness, Not Meeting Required Deadlines, Lack of Follow Through

- On Sales Building Day on July 13<sup>th</sup>, Dwight had done little if any preparation for this call. When questioned by his District Manager about his business for the prior week and his plan for the next week, Dwight had very little information to provide. Dwight became defensive, argumentative and placed blame on others. An outline via email was requested by District Manager, Rich Alexander, to clearly lay out when he and his retail partner would meet to plan their business prior to the call each Wednesday. As of August 5th, Dwight had not provided the requested document.
- Over a period of nine weeks, Dwight did not meet the district deadline for Sales Building Day information to be provided to his District Manager. This information is due to his DM by: Tuesday at 5:00 p.m. Dwight has either provided no information or only partial information (usually on Wednesday mid morning not Tuesday by 5pm. deadline)
- On Friday, August 12th, the District Manager visited Dwight's unit. Dwight and two of his associate managers were on duty. \$233 of food items had to be discarded as they either were not labeled, up to Cracker Barrel standards or out of hold time. Dwight was informed that he would be receiving a counseling.
- On August 6th, four General Managers in the District that are struggling with their ability to plan their business, drive sales on a shiftly basis and/or be proactive or reactive to control labor costs were notified to personally call the District Manager every day to explain what happened on the previous day if they did not make their daily "R" goal. Dwight returned a call to the District Manager on Monday, August 14th, since he had not called on the first day of this new requirement. Said he was confused because he thought his performance was based on "E" not "R". The District Manager explained the process once again and Dwight said he understood the requirements. However, Dwight has yet to call the District Manager even though his unit continues to miss daily "R" goal.

Plaintiff Doc's 000164  
Rodgers v. CB

Dwight Rodgers Docs  
Prod. to EEOC 000002

Continued:

Lack of Preparedness, Not Meeting Required Deadlines, Lack of Follow Through

- On August 18th, Dwight had one of his associate managers leave a voice mail for the District Manager explaining why labor was over on Wednesday, August 17th. The focus of this program was not a voice mail and definitely not an associate leaving a message. Dwight has not followed through on this expectation, nor taken action to demonstrate personal responsibility for this expectation.
- On Saturday, August 6th, an associate manager on Dwight's team informed the District Manager that another associate manager, on the previous Thursday, had used the "F" word in the office. The District Manager spoke with Dwight on Sunday, August 7th, and told him to start an open door investigation in regards to this matter. As of August 19th, after many conversations, the DM still had not received any statements from Dwight. The DM spoke with Dwight again that day. Then on Tuesday, August 16 this matter was discussed with Dwight. He stated that he was waiting to hear back from Employee Relations. Employee Relations also has not received any statements. As of August 24, Dwight had yet to provide these statements so that the investigation may proceed and the issue may be addressed. Dwight again assured his District Manager that he would obtain the statement on August 24. As of the morning of August 25, no statements have been received from Dwight.
- On Sales Building Day on Wednesday, August 17th, Dwight once again failed to get required information to his District Manager on a timely basis. Once the staffing worksheet was received, it became apparent that Dwight had not spent much time reviewing the schedules. There were many instances of too many employees or too few employees scheduled during different day parts. Instead of accepting personal responsibility, Dwight placed blame on his scheduling manger. A General Manager is responsible for reviewing the schedule prior to sending the staffing worksheet to his district manager.
- The manager's schedule is due from Dwight by end of month. As of August 25<sup>th</sup>, no manager's schedule has been submitted to the District Manager. The new schedule starts in two days. On August 24, Dwight assured his District Manager that he would submit the schedule later that day. He has again failed to follow through on expectations and commitments.
- On Sales Building Day on July 20th, Dwight failed to call in to the confer..... call; Tony Heiter the scheduling manager participated in the call. At 8:30 pm that evening, Dwight contacted his District Manager to report that he was on the road and could not pick up a signal on his cell phone. As a General Manager, Dwight

Plaintiff Doc's 000165  
Rodgers v. CB



is responsible for participating in the calls, and for communicating with his District Manager. He could have used a pay phone, as the call is a toll free number. Dwight responded to his District Manager in a non-chalant manner demonstrating that he does not understand the importance of these calls and his responsibility.

Dwight's District Manager has spoken with Dwight about these matters. Dwight has received coaching to help him understand the necessity of provided information crucial to our business in a timely manner.

Attendance and Communication:

- On Thursday, July 28th, Dwight notified his District Manager that he was going to be e-mailing a structured day by day outline of his workdays so that his District Manager could look at it and help Dwight in his planning. After 9 days the District Manager had still not received this document from Dwight.
- On Saturday, August 6th, Dwight was 35 minutes late to work.
- Dwight informed his Associate Manager that his District Manager had frozen all vacation requests due to the district being short managers. This is simply not the case. The vacation was approved (as this store had an extra manager on staff) and when approached, Dwight then stated that the Regional Vice President had placed a freeze on vacations, which also was not the case. His credibility as a leader was negatively impacted. His integrity was also, therefore, questioned.

*Bill G. Ahler*

9/3/05

8:30 A.M.

*Monica J. Frank*

9-3-05

9:05 a.m.

Plaintiff Doc's 000166  
Rodgers v. CB

**PLTF DWIGHT RODGERS  
DEPOSITION EX. 9**

9 Rodgers

Dwight Rodgers 090805 Intake Notes

~~The~~ Jommie Patterson, Associate Mgr <sup>W/M</sup> stated to PCP on 3-3-05 that on the preceding Wednesday that don't all Black bury their people on the week-ends. Patterson is supervised by PCP.

PCP called HR on 3-4-05 speaking with Vonn <sup>B/F</sup> Barr, Employee Relationship Specialist & played 'no role' in the investigation.

District Mgr Richard Alexander <sup>W/M</sup> stated PCP could take no actions toward Patterson because PCP was the one offended.

Alexander promised to conduct an investigation. PCP did not hear anything, therefore in April '05, PCP questioned the matter.

PCP was told to not forget who he worked for and Alexander once again promised he was going to take care of the matter.

PCP was discharged <sup>by Alexander</sup> on 9-3-05 for ~~conduct~~ performance unbecoming of a general mgr.

Rise to complaining PCP had no performance related problems.

PCP had been promoted in Sept '04 and relocated

to Montgomery.

Plaintiff Doc's 000132  
Rodgers v. CB

All complaints are to be handled the same way regardless as to whether it is mgmt or below.

PCP was not allowed to place ~~top~~ a White Associate mgr on final written warning although he had such authority.

PCP asked ~~Patterson~~ Alexander on three occasions the status of the investigation on his complaint

PCP first warning in 3/05 after he complained about Patterson

another warning in June 05 after he inquired about the status of his complaint.

Investigations should be completed in ten days unless unusual circumstances exist.

On 6-17-05, PCP received another performance warning. On 6-18-05, PCP sent a letter of dispute to the Regional V.P., Ron Phillips.

Alexander called PCP following a phone call in which Alexander called PCP a liar.

(3)

Shortly thereafter a meeting was held with PCP, Alexander and Phillips.

Phillips told Alexander PCP had to be allowed to do his own thing.

Other GM's have been late, no action taken.

Last warning was 9-3-05, the same day of his discharge.

090805  
L Byrdson



**PLTF DWIGHT RODGERS  
DEPOSITION EX. 10**

10 Rodgers

YOU HAVE A RIGHT TO FILE A CHARGE OF DISCRIMINATIONU.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
BIRMINGHAM DISTRICT OFFICE

## CHARGE QUESTIONNAIRE

This Form Is Affected By The Privacy Act Of 1974; Read The Last Page Before Completing This Form.

PLEASE READ THE FOLLOWING INFORMATION BEFORE PROCEEDING:

- \* A charge must be filed with the EEOC within 180 days after the alleged unlawful practice has occurred (300 days, if the employer is within the jurisdiction of a Fair Employment Practice Agency - If you are a state employee or you worked in Richmond County).
- \* The employer must have 15 or more employees if the alleged unlawful practice falls under Title VII of the Civil Rights Act and the Americans With Disabilities Act; 20 employees if the alleged unlawful practice falls under the Age Discrimination In Employment Act and 2 employees if the alleged unlawful practice falls under the Equal Pay Act.
- \* Federal employees should file with their Agency EEO Counselor, unless the unlawful practice falls under the Equal Pay Act.

Please complete this questionnaire and return it to the Receptionist. You will be interviewed by an Investigator to determine if your employment situation falls within the jurisdiction of the EEOC. Be prepared to spend up to approximately three hours here today. Interviews are conducted on a first-come, first-served basis. Thank you for your patience and cooperation.

PLEASE PRINT

NAME Dwight N. Rodgers Sr. DATE OF BIRTH [REDACTED] / 66  
ADDRESS [REDACTED]  
CITY Montgomery STATE AL ZIP 36117 COUNTY   
TELEPHONE 334-[REDACTED] (CELL) PAGER 678-[REDACTED]  
YOUR RACE Black YOUR SEX : FEMALE  MALE X  
SS# [REDACTED]

PAGE 2

WHAT DAY(S) AND TIME(S) ARE YOU AVAILABLE BY TELEPHONE BETWEEN THE HOURS OF 8:30 AM AND 5:00 PM? Anytime

CONTACT PERSON: (SOMEONE AT A DIFFERENT ADDRESS AND TELEPHONE NUMBER WHO KNOWS WHERE YOU CAN BE REACHED)

NAME Samuel Dunbar TELEPHONE 205 [REDACTED]

ADDRESS \_\_\_\_\_

CITY Birmingham STATE AL ZIP \_\_\_\_\_

ARE YOU REPRESENTED BY AN ATTORNEY? IF SO, PROVIDE HIS/HER NAME AND TELEPHONE NUMBER:

NAME N/A TELEPHONE \_\_\_\_\_

PLEASE ANSWER THE FOLLOWING QUESTIONS

DATE OF YOUR EMPLOYMENT 7/22/02 JOB AT TIME OF HIRE Manager  
JOB AT TIME OF DISCRIMINATORY ACTION General Manager

I BELIEVE I WAS DISCRIMINATED AGAINST BY: (CHECK THOSE THAT APPLY)

COMPANY ☒ UNION (Give Local Number) \_\_\_\_\_ EMPLOYMENT AGENCY \_\_\_\_\_

NAME Cracker Barrel Restaurant Inc.

ADDRESS 9191 Boyd-Cooper Pkwy

CITY, STATE, ZIP Montgomery, AL 36116

TELEPHONE 334-244-1085 APPROXIMATE NO. OF EMPLOYEES 60,000+

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY, STATE, ZIP \_\_\_\_\_

TELEPHONE \_\_\_\_\_ APPROXIMATE NO. OF EMPLOYEES \_\_\_\_\_

WHAT IS THE BUSINESS OF YOUR EMPLOYER Food Service

Page 3

PROVIDE THE NAME OF THE COMPANY OFFICIAL (OWNER, PRESIDENT OR PERSONNEL DIRECTOR)

NAME Cy Taylor TITLE PresidentYOUR BEST RECOLLECTION OF THE MOST RECENT DATE OF THE DISCRIMINATORY ACTIONS TAKEN  
BY THE EMPLOYER \_\_\_\_\_DO YOU BELIEVE THE ACTION WAS TAKEN AGAINST YOU BECAUSE OF ANY ONE (OR MORE) OF THE  
CATEGORIES LISTED BELOW? X YES \_\_\_\_\_ NO (IF YES, CIRCLE THE ONE(S) THAT APPLY)RACE, COLOR, SEX, RELIGION, NATIONAL ORIGIN, AGE, RETALIATION OR DISABILITY (SPECIFY)Based on actions taken after complaining about a  
discriminative remark.

SPECIFIC DISCRIMINATORY ACTION: (CIRCLE THE ONE(S) THAT APPLY)

DISCHARGE; HIRING; LAYOFF; RECALL; SUSPENSION; PROMOTION; RETIREMENT (INVOLUNTARY);

WAGES; HARASSMENT; SEXUAL HARASSMENT; OTHER (SPECIFY)

after several inquiries  
about the case mentioned above.

PROVIDE A BRIEF EXPLANATION OF THE DISCRIMINATORY ACTION TAKEN AGAINST YOU:

A junior Manager made a remark about blacks which  
offended myself and another employee. The investigation  
of this was taken away from me and conducted by my  
superior. I was never interviewed nor informed of any  
said investigation. When I inquired I started receiving  
negative documentation.

WHAT REASON(S) WERE YOU GIVEN FOR THE ACTION TAKEN

performance unbecoming  
a Cracker Barrel General Manager.

WHY DO YOU THINK THE ACTION BY THE EMPLOYER WAS DISCRIMINATORY?

As the only  
African American General Manager in Dist 15. After being  
inquiring & filing the discrimination allegation with  
Human Resources I started being treated differently  
by my supervisor (District Manager). Documented  
differently than any other counterpart of the same  
position.

Page 4

IF YOUR ISSUE OF DISCRIMINATION IS HIRING OR PROMOTION, LIST THE POSITION YOU WERE

SEEKING N/A

PROVIDE THE NAME & JOB TITLE OF THE PERSON IN THE SAME OR SIMILAR SITUATION WHO WAS

TREATED MORE FAVORABLE THAN YOU (Identify this person by race, sex, religion, national origin or age)

NAME Greg Walters JOB TITLE General Mgr. Cauc. male,  
Kevin ? General Manager Cauc. male, Kathy ? General  
Manager, Cauc. fem., Don ? General Mgr. Cauc. male.

PROVIDE THE NAME(S) AND TELEPHONE NUMBERS OF THE WITNESS(ES) WHO YOU THINK CAN  
PROVIDE EVIDENCE IN SUPPORT OF YOUR ALLEGATIONS OF DISCRIMINATION.

NAME Penny Schmidt TELEPHONE NUMBER \_\_\_\_\_  
Linda Osborne  
Charollette Johnson  
Shauna Ray

PROVIDE A DESCRIPTION OF THE INFORMATION THAT EACH PERSON LISTED ABOVE CAN SUBMIT IN  
SUPPORT OF YOUR ALLEGATIONS.

Penny Schmidt: Overheard the discrimination remark  
Linda Osborne: witness mistreatment and verbalized it.  
Charollette Johnson: "  
Shauna Ray: "

WHAT RELIEF ARE YOU SEEKING THROUGH THE EEOC? Compensation for termination;  
Clean employment record; job reinstatement.

**YOU HAVE A RIGHT TO FILE A CHARGE OF DISCRIMINATION**

I SWEAR OR AFFIRM THAT THE INFORMATION PROVIDED IS TRUE AND CORRECT TO THE BEST OF MY  
KNOWLEDGE.

SIGNATURE [Signature] DATE 9/8/05



**PLTF DWIGHT RODGERS**  
**DEPOSITION EX. 11**

EEOC Form 161 (10/96)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Dwight Rodgers  
919 Eastern Oats Drive  
Montgomery, AL 36117

From: Birmingham District Office  
Ridge Park Place  
1130 22<sup>nd</sup> Street South  
Suite 2000  
Birmingham, AL 35205

[ ] On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR § 1601.7(a))

| Charge No.     | EEOC Representative        | Telephone No.  |
|----------------|----------------------------|----------------|
| 130-2005-06620 | Serena Curry, Investigator | (205) 212-2072 |

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- [ ] The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- [ ] Your allegations did not involve a disability that is covered by the Americans with Disabilities Act.
- [ ] The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- [ ] We cannot investigate your charge because it was not filed within the time limit required by law.
- [ ] Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.
- [ ] While reasonable efforts were made to locate you, we were not able to do so.
- [ ] You had 30 days to accept a reasonable settlement offer that afford full relief for the harm you alleged.
- [ X ] The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- [ ] The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- [ ] Other (briefly state) \_\_\_\_\_

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

**Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS from your receipt of this Notice; otherwise, your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

*Beverly L. Hinton for*  
Beverly Williams-Kimbrough, District Director

8/31/06

Enclosure(s)

(Date Mailed)

cc: Cracker Barrel Old Country Store, Inc.  
c/o Ashley Hattaway  
Burr & Forman, LLP  
420 North 20<sup>th</sup> Street  
Birmingham, AL 35203

DEFENDANT'S  
EXHIBIT

11 Rodgers

Plaintiff Doc's 000034  
Rodgers v. CB

**PLTF DWIGHT RODGERS  
DEPOSITION EX. 12**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**DWIGHT N. RODGERS,**

Plaintiff,

vs.

**CRACKER BARREL OLD  
COUNTRY STORE, INC.,**

Defendant.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Civil Action File  
No.**

**DEFENDANT'S  
EXHIBIT**

*12 Rodgers*

**PLAINTIFF'S INITIAL DISCLOSURES**

(1) State precisely the classification of the cause of action being filed, a brief factual outline of the case including plaintiff's contentions as to what defendant did or failed to do, and a succinct statement of the legal issues in the case.

This is a civil rights lawsuit arising under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 2000e 3(A) et seq,. Plaintiff under the supervision of Richard Alexander was subjected to disparate treatment based on a pattern and practice of racial discrimination in evaluation and discipline of minorities of Defendant Cracker Barrel Old Country Store, Inc., and retaliatory treatment through termination. Plaintiff had been employed by Defendant as a General Manager from July, 2000 through to September, 2005. Plaintiff filed an internal complaint and was retaliated against with adverse performance evaluations, unwarranted reprimands and unfounded charges. He was then terminated without cause. Plaintiff had filed a Charge of Discrimination charging his employer with discrimination based on what plaintiff reasonably believed to be Defendant's discriminatory comments, conduct and actions directed at Plaintiff.

**Issues:**

**Did Defendant Cracker Barrel violate Mr. Rodgers' rights secured under the Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 2000e 3(A) et seq., through disparate treatment, discrimination and retaliation against Plaintiff?**

**Did Defendant's actions constitute a wilful violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 2000e 3(A) et seq., entitling Plaintiff to liquidated damages.**

**Was Mr. Rodgers' poor performance evaluation and termination in violation of the retaliation provisions of the Fair Labor Standards as incorporated under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 2000e 3(A) et seq.?**

**Was Plaintiff retaliated against, on account of having filed a Charge of Discrimination, by the Defendant?**

**Was Plaintiff retaliated against on account of his objecting to what Plaintiff reasonably believed to be discriminatory comments and conduct on the part of the Defendant?**

**Whether Plaintiff has been harmed as a result of employer's acts and if employer's actions are found to be in violation of law, what should be the proper remedy?**

(2) Describe in detail all statutes, codes, regulation, legal principles, standards and customs or usages, and illustrative case law which plaintiff contends are applicable to this action.

**Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 2000e 3(A) et seq.**

(3) Provide the name and, if known, the address and telephone number of each individual likely to have discoverable information that you may use to support your claims or defenses, unless solely for impeachment, , identifying the subjects of the information. (Attach witness list to Responses to Mandatory Disclosures as Attachment A.)

**See Attachment A.**



**Plaintiff's investigation is ongoing, and he will comply with his duty to supplement these responses as necessary.**

(4) Provide the name of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence. For all experts described in F.R. Civ.P. 26(a) (2) (B), Provide a separate written report satisfying the provisions of that rule. (Attach expert witness list and written reports to Responses to Mandatory Disclosures as Attachment B.)

**Plaintiff has not identified any expert witness at this time but will comply with his duty to supplement these disclosures.**

(5) Provide a copy of, or description by category and location of, all documents, data compilations, and tangible things in your possession, custody, or control that you may use to support your claims or defenses unless solely for impeachment, identifying the subjects of the information. (Attach document list and descriptions to Responses to Mandatory Disclosures as Attachment C.)

**Much of the documents relevant to this case are in the possession, custody or control of Defendant. Any other responsive documents Mr. Rodgers discovers will be made available pursuant to F.R.Civ.P. 34 at a time and place mutually agreeable to the parties.**

(6) In the space provided below, provide a computation of any category of damages claimed by you. In addition, include a copy of or describe by category and location of, the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered, making such documents or evidentiary material available for inspection and copying as under F.R.Civ. P. 34. (Attach any copies and descriptions to Responses to Mandatory Disclosures as Attachment D.)

**Plaintiff seeks back pay which may be calculated at the rate of his annual salary less any mitigation. Also, Plaintiff seeks the value of benefits lost and front pay and compensatory damages. Mr. Rodgers will need to obtain documents from Defendant during the discovery period in this case in order to accurately determine the amounts of frontpay and backpay to which he is entitled.**

**Plaintiff seeks reinstatement or front pay in lieu thereof.**

**Plaintiff seeks compensatory damages. However, those amounts can only be set by the finder of fact in the instant action.**

**Mr. Rodgers seeks an award of punitive damages against Defendant, based upon its willful, intentional, and deliberate violations of his statutory rights and its conscious disregard of the probable consequences of its actions, in an amount to be determined by the enlightened conscience of the jury.**

**Plaintiff seeks attorney's fees and costs, which are not static, and which continue to accrue. Therefore, no monetary value can be set.**

**Mr. Rodgers seeks an award of pre-judgement interest, on all damages awarded, as allowed by Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 2000e 3(A) et seq.**

**Most of the documents relevant to Mr. Rodgers' damages are in the possession, custody or control of Defendant. Any other responsive documents Mr. Rodgers discovers will be made available pursuant to F.R. Civ.P. 34 at a time and place mutually agreeable to the parties.**

**Such other relief as the court deems appropriate.**

(7) Attach for inspection and copying as under F.R.Civ.P. 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment. (Attach copy of insurance agreement to Responses to Mandatory Disclosures as Attachment E.)

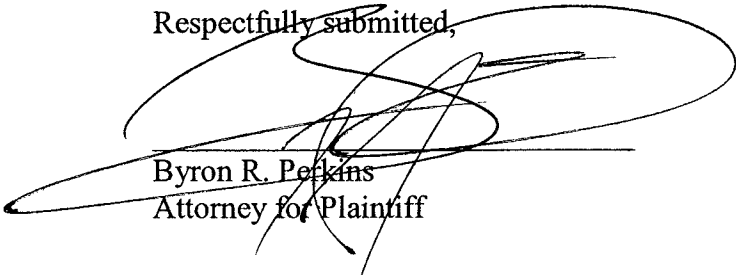
**Any such insurance agreements which may exist are in the possession of the Defendant.**

(8) Disclose the full name, address and telephone number of all persons or legal entities who have a subrogation interest in the cause of action set forth in plaintiff's

cause of action and state the basis and extent of such interest.

**None known to plaintiff at this time.**

Respectfully submitted,

  
Byron R. Perkins  
Attorney for Plaintiff

**OF COUNSEL:**

**THE COCHRAN FIRM**

505 North 20<sup>th</sup> Street  
Suite 825  
Birmingham, AL 35203  
(205) 244-1115 Office  
(205) 244-1171 Fax  
[BPERKINS@cochranfirm.com](mailto:BPERKINS@cochranfirm.com)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served upon the following counsel of record by U.S. MAIL, on this the 16 day of April, 2007.

Lee Breedlove, Esq.  
Monica A. York, Esq.  
Breedlove and Lassiter, LLP  
250 E. Ponce de Leon Ave. Ste. 425  
Decatur, Georgia 30030  
(404) 377-5512

Jennifer Busby, Esq.  
Ashley Hattaway, Esq.  
Burr & Foreman, LLP  
420 North 20<sup>th</sup> Street  
Suite 3400  
Birmingham, Alabama 35203

Done this 16 day of April, 2007.

  
OF COUNSEL

Attachment A

Tommy Patterson, Sr. Associate Manager at the facility contributed to the situation by making a racially derogatory and offensive comments and is aware of the Plaintiff's claims.

Richard Alexander, District Manager is aware of the situation that is a result of this claim.

**PLTF DWIGHT RODGERS  
DEPOSITION EX. 13**



June 17, 2005

Dwight, once again I find it necessary to discuss and document concerns which I have with your actions and/or behaviors in your current position as General Manager of unit #574 Montgomery, Alabama.

When you requested a lateral transfer to #574 from #237, a meeting was set for you, I and Ron Phillips(RVP) to discuss this possibility. This meeting lasted over three hours and covered many topics which included your strengths, talents, motivation and also many concerns on what you had not accomplished as General Manager at #237 Gardendale, AL.

At the end of the meeting, Ron and I agreed to grant you the lateral transfer. However, we made it very clear that you had to be successful in two important leadership traits that you had not exhibited in the past. These traits that were defined and discussed in much detail were:

Credibility: Do what you say you are going to do.

Operations: Find your "Operator's Hat" and role model the GM position in your unit.

Here are some of the actions and/or behaviors that cause me to question whether you can or are willing to be credible and be a profit center operation:

6/03/05: Second day in new unit and was to be here at 7am. You arrived at 7:20am and when I questioned you as to why you were late, you told me that you had told a member of the training team that you would be in between 7am-7:30am. Dwight, when you, the store opening supervisors and both DMs met at 1pm the night before we all agreed to be in at 7am as at 8am the Special Guest Preview would be starting. Once again, you failed to call me or leave a voice mail as to a schedule change. (credibility)

6/11,6/12: The first weekend that #574 is opened. Dwight, there were many times that I had to question you as to what you were doing in the office. Dwight, many of the tasks you were doing could have been completed by any of your newer inexperienced associates or Melanie your EIC. Chris Bailey, Store Opening Supervisor also made comments as to how often you are in the office. (operator)

6-13-05: You were scheduled 7a - 5p. You left at 3:30pm take care of a vehicle in a repair shop. Dwight, this is also on a day that we had one of your associates fail to show up for a scheduled shift. You did call Ashley in on her day, off but you left before she arrived leaving only one new associate on duty. Couldn't you have picked up this vehicle on Wednesday, which was your day off? (operator)

6-16-05: You were scheduled 11a - 9p. You called me at 11:01am and said you were leaving the hotel across the street to be at work. I later find out that you entered the building at 12:10pm. When questioned, you state that you were talking to a landscaper about upgrades or repairs to the landscape. Then I question your judgement and ability to prioritize your actions. You should have told the landscaper to come back at 3pm and you should have got into the building to check on whether we were ready for lunch business and been part of the 11a - (2p hour. (operator)

6-17-05: You were scheduled 9a - 7p. I left home at 6:40am to get here in time to talk to you at 9am before peak period set up for Friday lunch. I get here at 8:30am only to find that you had once again changed your schedule without informing me. Dwight, had I known that you needed to change your schedule, I could have visited the Gardendale unit for a couple of hours before driving to Montgomery. This has to be at least 10 to 12 times that you have failed to report schedule changes to myself. (credibility)

Dwight, I cannot and will not continue to spend two to three days each week in your unit and deny other units and managers my time with them. Ron and I stressed the importance of credibility in a leadership role and the importance of role modeling a passion for shift execution by finding your operator's hat and being involved in our goal of serving the highest quality food and best guest service in Montgomery, AL.

Any future issues with you not doing what you say you are going to do (credibility) and/or your lack of being greatly involved in shift execution/associate development (operator) could possibly lead to me making a decision on whether you are the right leader for this unit.

R. C. L. 6/18/05

DEFENDANT'S  
EXHIBIT

Rc  
1

13 Rodgers

**PLTF DWIGHT RODGERS**  
**DEPOSITION EX. 14**

IMAGED

Let  
Dwight Rodgers  
# 3641639  
5p9

To: Ron Phlips  
(678) [REDACTED] - [REDACTED]

From: Dwight Rodgers  
# 574

IMAGED

Thank

IMAGED

IMAGED

DEFENDANT'S  
EXHIBIT

= 14 Rodgers

IMAGED

To: Ron Phillips, RVP, and Region 2

From: Dwight N. Rodgers Sr., GM, and Unit 574

Ron, I am writing this letter with great concern about my career and future with Cracker Barrel.

On June 18<sup>th</sup> I was asked by Rich Alexander, DM, Dist 15 to meet for a discussion about concerns that he had about my performance and decisions I made as GM of unit 574. Before continuing the conversation he paused to comment that before today June 18<sup>th</sup> he wasn't sure about my operators' ability, but was impressed by my performance on that said day. He also stated that he had written the documentation in question before my performance that day and saw it fit to continue with its presentation.

Rich began to read a list of credibility and operational issues that I feel were unwarranted and above all other things a motivational kick in the head.

Over the first six months in my position of General Manager I've had my personal/professional characteristics questioned and give and take rightfully so. My concerns are that after two weeks in position as GM of unit 574, I'm receiving documentation, which is not factual nor justly given. In making every effort to recognize and adjust the behaviors, which Rich expressed including communicating, it seems the communication is only done through documentation.

My dispute:

6/3 No schedule change was made and not communicated because no meeting was held the evening Rich commented on that day. Paula Pate was the ROS in charge and we both worked stayed late and discussed our arrival time with each other and we both agreed to 0730 hrs because the next day was going to be a long day. I arrived at 0720hrs and was not late nor did I change my schedule. Paula Pate is willing to verify this statement.

6/11-12 Rich walked into the office only after I had been in the office less than 2 minutes and made the comment "don't give the perception of being an office manager" and walked back out. As he was leaving I asked him what was he talking about. I had only been in the office a few minutes before he came in and that I was almost finish what I was doing. I also explained that the Associate Manager "Brian" who asked about the document did not know how to find the document in the computer and that I was simply retrieving it for him. Rich commented that task I was completing should have been done by less experienced managers than myself, yet I arrived 1 day before preview day the office was in rambles. I was staying two and three hours over my own scheduled to try and get some organization to the office because no one knew how to set the office up. What concerns me here the most is that Rich mentioned Chris Bailey SOS commented about me being an office manager and she denies ever making that comment to Rich. Chris stated that Rich made the comment about me being an office manager and she said did not respond because she did not see me in the office as he was commenting. Ms. Bailey stated that if need be she would speak with you about any and all conversations about my performance that she shared with Rich.

IMAGED



6/13 Every since 6/3/05 I informed Rich as well as the SOS/ROS of my transportation situation. My vehicle was being repaired and I was in a loaner as of 6/1/05. I informed Rich, that when the Repair Company called and informed me when my car was ready I would have to return the loaner or I will be charged from repair completion date forward. On 6/13 I received a call from the repair company around 1:00pm and was told the vehicle had to be picked up NLT 5pm. I called Rich and informed him of the phone call and got his permission to go and get the vehicle. We were not busy and the ROS, SOS and I Associate was on duty. Rich said to go with the ROS or SOS and see if they felt it was ok to leave and retrieve my vehicle. I also had a second associate coming in at 4:00pm. I did as requested and stayed as late as 3:30pm to ensure that the 2<sup>nd</sup> associate was not too far off. The ROS (Paula Pate) said to go on before I hit traffic and that all was well and I did. This was communicated with Rich from beginning to end.

6/16 As I strive to improve the behaviors which were in questioned I made every effort to do just that. As Rich stated in his documentation. I called him when I was simply running 1 minute late to inform him of that. Upon arriving to the unit the landscaper was outside waiting on me because Rich asked him to complete a project. I arrived at the unit just minutes after talking to Rich, placed down my paperwork verified with the manager on duty that all was well. I then walked the grounds with the landscaper before receiving/signing anything and went inside to start my shift. As Rich stated Vicki (Store Opening Specialist) stated she did not see me until she was leaving the building at 12:00 so I must not have arrived until then. Rich then stated that he questioned my judgement and ability to prioritize my actions. That I should have asked the landscaper to return at a later time. If were not ready for said business then I. Why would the specialist be leaving the building? Why ask the landscaper to return when there was absolutely none thing going on. Asking the vendor to return would have been pointless.

6/17 Since transferring to Unit 574 I have made every effort to communicate/over communicate with you every change in schedule, every minute out of the unit, every concern of the unit, relentlessly. On 6/16 a schedule change had to be made because of a concerns that the opening team had about the closing managers. I could not relate the change to Rich because I had to voicemail the associate that I had to make the change with and had no confirmation that the change would take place. After my shift and leaving that night the associate called while I was walking out of the door and confirmed that he would be in at 0900 instead of 1100hrs which would allow me to come in one and half hour later. After walking out at 10:00pm I was ready to get some sleep and return the next day. Though by his own words, Rich stated that I have been calling him even when 1 minute late, the one time and under last minute circumstances I'm documented and damned if I do and try and double damned if I don't.

The closing statement of not is willing to continue to spend two and three days each week in my unit and deny other managers were his time was unbelievable. Not only was the comment inappropriate, but not one unit has 5 managers with 6.75 avg. months between them all. In holding discussions with the SOS and ROS they found it unbelievable that he even documented me nonetheless had issues with my performance.

All parties mentioned will be willing to discuss any conversations or situations with you.

Chris Bailey, Store Opening Supervisor



IMAGED

Paula Pate, Retail Opening Supervisor

Dwight N. Rodgers Sr.  
GM, Unit 571

IMAGED

IMAGED

IMAGED

**PLTF DWIGHT RODGERS**  
**DEPOSITION EX. 15**

## Memorandum

**To:** Dwight Rodgers, 574 General Manager  
**From:** Rich Alexander  
**CC:** Phillips Ron 9802  
**Subject:** Performance Concern RE: Guest Complaints

Dwight, the level of guest complaints coming from your unit is alarming. After only 10 weeks your unit has received 27 guest complaints. Your unit is averaging a guest complaint for every \$16,074. If this trend continues, you will realize approximately 142 complaints in a fiscal year based on your current average sales volume. Dissatisfied customers result in decreased Sales. Sales at your unit have continued to decrease on a week after week basis. This memorandum serves as a Written Warning.

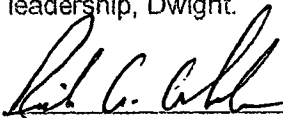
Continuing to provide the level of service to our guests that results in this high number of complaints is unacceptable. I'm sure you realize that this reflects only the guests that take the time to complain. Most guests don't take the time; they just don't come back. Also, in our industry, they say the guest having a complaint will tell at least 7 other people about their disappointing experience.

As General Manager you are expected to manage, investigate and respond to Guest Relations issues in a timely manner. I have previously discussed the need for immediate responsiveness on Guest Relations issues with you. Additionally, I communicated on three separate occasions via voice mails that a greater sense of urgency on this matter is expected. The lack of importance that you have placed on the Guest Relations issues in your unit demonstrates a low sense of concern for our guests, for their satisfaction and for your unit's success. Delayed responses to our Guest Relations issues do not reflect the commitment and leadership that is expected of a Cracker Barrel General Manager.

I expect you to immediately address the issues that are causing your unit not to be able to provide the Cracker Barrel experience at #574 Montgomery. You need to get more involved ensuring the following:

- Staffing levels are appropriate for each and every shift to ensure we have staff to serve our guests.
- Peak period set up is done to prepare every shift by managers and staff.
- Managers are on the floor visiting with **every** guest that comes in, making them feel welcome, valued and ensuring that guest expectations are being met.
- Excellent service delivered through Cracker Barrel's Best Practices.
- Managers are circling in the BOH to ensure that food quality and availability is up to Cracker Barrel standards.
- All employees and managers understand "STARS" and how to apply in a guest recovery situation, which can prevent Guest Relations issue

The level of service to our guests must immediately improve and be maintained under your leadership, Dwight.



Rich Alexander  
August 6, 2005



Signature

8/6/05  
Date

Plaintiff Doc's 000169  
Rodgers v. CB

**DEFENDANT'S  
EXHIBIT**

Rodgers

15

Dwight Rodgers Docs  
Prod. to EEOC 000007

**DFT CRACKER BARREL'S  
EX. C  
TO EVIDENTIARY SUBMISSION**

AFFIDAVIT

STATE OF Georgia )  
 )  
COUNTY OF Fulton )

I, Clete McGinty, being first duly sworn, on oath, depose and say that:

I am a duly authorized custodian of the records of (insert name of provider) RTM  
Restaurant Group, Inc including records pertaining to Dwight Rodgers, and have  
the authority to certify those records.

The copy of the records attached to this affidavit is a true copy of the records described in  
the subpoena duces tecum served on or about 5/2/07.

The records were prepared by the personnel or staff of (insert name of provider) \_\_\_\_\_  
RTM or persons acting under their control, in the regular course  
of the business at or about the time of the act, condition or event recorded.

I declare pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the foregoing is true  
and correct and based upon my personal knowledge and knowledge obtained by me in the  
performance of my duties.

Clete McGinty  
Signature

7/2/07  
Date



Bobbi Crum  
July 3, 2007



|         |           |          |      |        |       |            |
|---------|-----------|----------|------|--------|-------|------------|
| DATE    | EMPLOYEES | FUNCTION | LIST | REPORT | FLAGS | EMPLOYEE # |
| 6/19/07 | 198315    | HISTORY  |      |        |       | 227927302  |

|                                     |
|-------------------------------------|
| POSITION HISTORY FOR DWIGHT RODGERS |
|-------------------------------------|

|                  |          |                    |
|------------------|----------|--------------------|
| ..ITEM..         | ..DATE.. | ....NEW VALUE .... |
| DEPARTMENT       | 10/31/01 | 1744               |
| EMPLOYEE TYPE    | 10/31/01 | 2 Mgr Trainee      |
| EMPLOYEE TYPE    | 10/31/01 | 3 Asst Mgr         |
| JOB CODE         | 10/31/01 | 0                  |
| DEPARTMENT       | 11/28/01 | 5931               |
| DEPARTMENT       | 10/17/01 | 1821               |
| DEPARTMENT       | 12/07/01 | 5307               |
| TERMINATION DATE | 06/18/02 | 06/15/02           |
| TERMINATION REAS | 06/18/02 | 59                 |

press return when ready

| DATE                | EMPLOYEES | FUNCTION                       | LIST | REPORT                      | FLAGS | EMPLOYEE # |
|---------------------|-----------|--------------------------------|------|-----------------------------|-------|------------|
| 6/19/07             | 198315    | HISTORY                        |      |                             |       | 227927302  |
| 06/18/02            | PSF AUTO  | GIVING HOUR TO SOMEONE THAT WA |      |                             |       |            |
|                     | FROM..... |                                |      | TO.....                     |       |            |
| TERMINATION DATE    |           |                                |      | 06/15/02                    |       |            |
| TERMINATION REAS 00 |           |                                |      | 59                          |       |            |
|                     |           |                                |      | Violation of Company Policy |       |            |

press return when ready

DFT CRACKER BARREL'S  
EX. D  
TO EVIDENTIARY SUBMISSION

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**DWIGHT N. RODGERS,**

Plaintiff,

vs.

**CRACKER BARREL OLD  
COUNTRY STORE, INC.,**

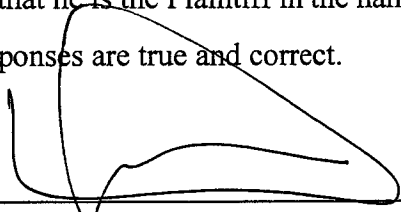
Defendant.

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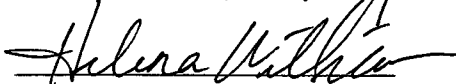
**Civil Action File  
No.: 2:06 CV 1067-WKW**

**VERIFICATION**

I, personally appeared before the undersigned officer authorized to administer oaths, Dwight N. Rodgers, who does state under oath that he is the Plaintiff in the named **Discovery Responses**. The facts alleged in the Discovery Responses are true and correct.

  
Dwight N. Rodgers

Sworn to and subscribed before  
me this 15<sup>th</sup> day of May, 2007.

  
Notary Public

**HELENA WILLIAMS**  
Notary Public  
DeKalb County  
State of Georgia

My Commission Expires December 27, 2008  
My commission expires:

Dec. 27, 2008

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

|                             |   |                                  |
|-----------------------------|---|----------------------------------|
| <b>DWIGHT N. RODGERS,</b>   | ) |                                  |
|                             | ) |                                  |
| PLAINTIFF,                  | ) | <b>Civil Action File</b>         |
|                             | ) | <b>No. 2:06-CV-1067 WKW -SRW</b> |
| vs.                         | ) |                                  |
|                             | ) |                                  |
| <b>CRACKER BARREL OLD</b>   | ) |                                  |
| <b>COUNTRY STORE, INC.,</b> | ) |                                  |
|                             | ) |                                  |
| DEFENDANT.                  | ) |                                  |

**PLAINTIFF'S RESPONSE TO DEFENDANT'S FIRST  
INTERROGATORIES TO PLAINTIFF**

Pursuant to Rules 26 and 33 of the Local Court Rules for the United States District Court for the Northern District of Georgia, Plaintiff Dwight Rodgers (hereinafter referred to as "Plaintiff") responds to Defendant Cracker Barrel Old Country Store, Inc., ("Defendant") First Interrogatories to Plaintiff (the "Interrogatories") with the following objections and answers:

**GENERAL OBJECTIONS**

Dwight Rodgers objects to these Interrogatories to the extent that:

- (1) The interrogatories are vague and ambiguous;
- (2) A full and complete response to the Interrogatories would subject



can confirm dates and places.

103 Whitney Chase, Stone Mountain, GA30088

919 Eastern Oats Drive, Montgomery, AL 36117

3.

List each job you have had during the last ten (10) years, whether part-time or full-time, including the employers' addresses, your dates of employment, your wages or earnings, your immediate supervisor(s), positions held by you, and the reason for the ending of the employment relationship.

**Response:**

Plaintiff specifically incorporates objections 3 and 5. Subject to and without waiving the foregoing objection, Plaintiff states as follows:

Ruby Tuesday, full time, General Manager, 3010 Panola Road, Lithonia, GA 30038,  
2005 - present

Cracker Barrel, full time, Montgomery Al, 7/2001 -9/2005, Associate Manager, Sr.  
Associate Manager, General Manager, Richard Alexander (District Manager).

RTM Southeast Inc., full time, Atlanta Ga, 8/2000-7/2001, Multi Units General  
Manager, sought another position

Bojangles Restaurant, Inc., full time, Martinez Ga, 6/1997-8/2000, Multi Units

Training Director, sought another position

Athens Daily News, full time, Athens Ga, 2/1996 - 6/1997, District Manager, sought another position

4.

If you have been examined, evaluated, counseled, treated, prescribed medication by or consulted with any healthcare provider, including, but not limited to, any doctor, physician, counselor, psychologist, psychiatrist, surgeon, hospital, clinic or any other healthcare facility with respect to any facts or alleged damages referenced in your Complaint and/or otherwise related to your allegations in this action, state identity of each, the dates of treatment, any medication or treatment prescribed, and any diagnosis rendered as to any illness or injury.

**Response:**

Plaintiff specifically incorporates objections 2, 4 and 5. Subject to and without waiving the foregoing objection, Plaintiff states as follows: Plaintiff can not recall every physician that has examined, evaluated, counseled or treated him regardless of the illness or injury and will have to supplement this response at a later date.

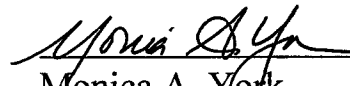
5.

If you have ever been treated, counseled or observed by any person or entity,

Respectfully submitted this \_19th\_\_\_ day of April, 2007.

s/Byron R. Perkins w/ *expression*  
Byron R. Perkins  
State Bar No. ASB-0183-N75B

**THE COCHRAN FIRM**  
505 North 20<sup>th</sup> Street - Suite 825  
Birmingham, Alabama 35203  
205-244-1115  
205-244-1171 fax  
email: [bperkins@cochranfirm.com](mailto:bperkins@cochranfirm.com)

  
Monica A. York  
Georgia State Bar No. 781153  
*Pro Hac Vice*

**ATTORNEYS**  
**BREEDLOVE & LASSITER, LLP**  
250 E. Ponce de Leon Avenue, Suite 425  
Decatur, Georgia 30030  
404-37705512  
404-377-5515 fax  
email: [myork@breedloveandlassiter.com](mailto:myork@breedloveandlassiter.com)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**DWIGHT N. RODGERS,**

Plaintiff,

vs.

**CRACKER BARREL OLD  
COUNTRY STORE, INC.,**

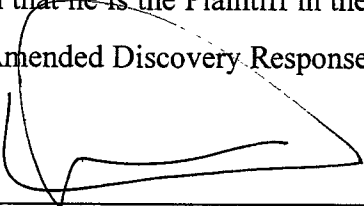
Defendant.

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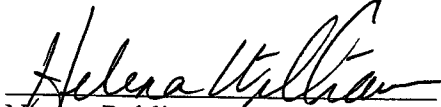
**Civil Action File  
No.: 2:06 CV 1067-WKW**

**VERIFICATION**

I, personally appeared before the undersigned officer authorized to administer oaths, Dwight N. Rodgers, who does state under oath that he is the Plaintiff in the named **Amended Discovery Responses**. The facts alleged in the Amended Discovery Responses are true and correct.

  
\_\_\_\_\_  
Dwight N. Rodgers

Sworn to and subscribed before  
me this 15<sup>th</sup> day of May, 2007.

  
\_\_\_\_\_  
Notary Public

HELENA WILLIAMS  
Notary Public  
DeKalb County

My commission expires Georgia  
My Commission Expires December 27, 2008

December 27, 2008

ATTORNEYS

## BREEDLOVE & LASSITER, LLP

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Lee Breedlove  
Jule C. Lassiter, III  
Monica A. York\*

\*Also admitted in Massachusetts

404.377.5512  
404.377.5515 Fax

May 7, 2007

Ashley Hattaway, Esq.  
Burr & Forman LLP  
3100 Wachovia Tower, 420 North 20<sup>th</sup> Street  
Birmingham, Alabama 35203

Re: **Dwight N. Rodgers v. Cracker Barrel Old Country Store, Inc.**  
United States District Court for the Middle District of Alabama  
Northern Division: Civil Action No.: CV-06-1067-WKW-SRW

Dear Ms. Hattaway:

We are in receipt of your letter dated May 1, 2007 regarding Plaintiff's responses to discovery requests. I supplement our responses with the following information.

Interrogatory No. 2: 6/05 - 01/07 919 Eastern Oak Drive, Montgomery, AL 36117  
9/04 - 06/05 Birmingham AL, (can not recall the exact location)  
8/00 - 09/04 404 Summit Lake Drive, St Mountain, GA 30083  
Parkway Vista, Atlanta, GA  
6/97 - 08/00 North Augusta, SC

Also, see Plaintiff's submission of the Defendant's Background Verifications which included some of his prior addresses.

Interrogatory No. 3: Plaintiff provides his background verification which covers wages, his immediate supervisors, and addresses for the companies. he also provides his online resume submitted to Defendant.

Interrogatory No. 4: Plaintiff did not see any health care providers in reference to the allegations in his complaint or this action.

Interrogatory No. 5: Plaintiff still objects to this request on the grounds that it is not relevant to the issues raised in this action and is not reasonably calculated to lead to the discovery of admissible evidence, however



he amends his response by stating that he has not been treated for any psychological, emotional or mental condition, substance abuse or disorder.

Interrogatory No. 6: Plaintiff has not been a party to any other lawsuit.

Interrogatory No. 7: Plaintiff has not filed any other administrative or judicial claim with the exception of a September 2005 EEOC claim and Department of Labor claim against the Defendant.

Interrogatory No. 10: Plaintiff provides the following dates 1984-1985 - did not graduate from Commonwealth College  
1990-1992 - did not graduate from University of Maryland  
1998- 2000 - did not graduate from Cochise College

Interrogatory No. 11: Plaintiff submits pay stubs from Ruby Tuesday detailing his salary. He does not recall the amount he received for unemployment benefits. He is still owed a bonus from Defendant in the amount of \$17,000.00.

Interrogatory No. 12: The last two witnesses are being removed by Plaintiff as witness and can be disregarded.

Interrogatory No. 13: If Plaintiff determines that he is going to rely on any individual that he has not already listed, he will provide this information but at this time his response remains the same.

In regards to the RTP plaintiff is requesting his tax documents and should be receiving them in three to four weeks upon receipt he will forward them. Plaintiff is willing to sign an authorization for the release of tax information. Plaintiff will provide all that he has in his possession to date. As is our duty we will supplement this responses and requests if more information or documents become available.

If you have any questions, please contact our office. Thank you for your cooperation in this matter.

Sincerely,

**ATTORNEYS  
BREEDLOVE & LASSITER, LLP**

  
\_\_\_\_\_  
Monica A. York

cc: Byron Perkins

**DFT CRACKER BARREL'S  
EX. E  
TO EVIDENTIARY SUBMISSION**

AFFIDAVIT

STATE OF North Carolina,  
COUNTY OF Mecklenburg }

I, Jeannine Eubanks, being first duly sworn, on oath, depose and say that:

I am a duly authorized custodian of the records of (insert name of provider) Bojangles' Restaurants Inc. including records pertaining to Dwight Rodgers, and have the authority to certify those records.

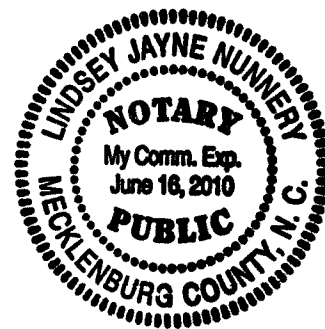
The copy of the records attached to this affidavit is a true copy of the records described in the subpoena duces tecum served on or about May 4, 2007

The records were prepared by the personnel or staff of (insert name of provider) Bojangles' Restaurants Inc. or persons acting under their control, in the regular course of the business at or about the time of the act, condition or event recorded.

I declare pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the foregoing is true and correct and based upon my personal knowledge and knowledge obtained by me in the performance of my duties.

Jeannine Eubanks  
Signature

May 9, 2007  
Date



Lindsey Jayne Nunney  
May 9, 2007

# BOJANGLES'

## WORK INCIDENT REPORT

Employee's Name Rodgers Dwight Date 5/3/01  
 Last First Middle  
 Position A.D. Department / Location OSI  
 Date of Violation 5/3/01  
 Has employee previously received a written warning? ( ) Yes ( ☒ ) No

## Description of Incident ( Check One )

- ( ) Absent ( ) Excused ( ) Unexcused  
 ( ) Tardy  
 ( ☒ ) Violation of Company Policy  
 ( ) Notice of Unsatisfactory Performance  
 ( ) Misconduct

## Disciplinary Action Taken

- ( ) Verbal Warning ( ) Written Warning - Second  
 ( ☒ ) Written Warning - First ( ) Suspension for \_\_\_\_\_ Days  
 ( ) Other ( Specify ) \_\_\_\_\_

## Consequence of Repeat Violations

- ( ) Written Warning - First ( ) Suspension for \_\_\_\_\_ Days  
 ( ) Written Warning - Second ( ☒ ) Termination  
 ( ) Other ( Specify ) \_\_\_\_\_

## Supervisor Comments

Dwight failed to follow procedures set forth in the Security / Loss Prevention Manual in that a 12 hour gap occurred in reporting a missing deposit.

## Employee Comments

HAS THE EMPLOYEE BEEN INFORMED OF THE CONSEQUENCES OF REPEAT VIOLATIONS?  
 ( ☒ ) Yes ( ) No

M. Glendon 5/4/01  
 Supervisor's Signature Date

[Signature] 5/4/01  
 Employee Signature Date

Initiated By \_\_\_\_\_ Date \_\_\_\_\_

Witness Signature \_\_\_\_\_ Date \_\_\_\_\_

\* Signing this form does not indicate agreement, but only signifies you have been informed of the above action.

## WORK INCIDENT REPORT

|                                                                                                                                     |                                 |                       |
|-------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|-----------------------|
| Employee Name: <u>Ronnie Rodgers</u>                                                                                                |                                 | Date: <u>12/26/06</u> |
| Position: <u>Unit Driver</u>                                                                                                        | Department/Location: <u>489</u> |                       |
| Date of Violation or Superior Performance:                                                                                          |                                 |                       |
| If violation, has employee previously received written warning? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |                                 |                       |

## DESCRIPTION OF INCIDENT (CHECK ONE):

- |                                                                |                                  |                                                      |
|----------------------------------------------------------------|----------------------------------|------------------------------------------------------|
| <input type="checkbox"/> Absent                                | <input type="checkbox"/> Excused | <input type="checkbox"/> Unexcused                   |
| <input type="checkbox"/> Tardy                                 |                                  | <input type="checkbox"/> Violation of Company Policy |
| <input checked="" type="checkbox"/> Unsatisfactory Performance |                                  | <input type="checkbox"/> Misconduct                  |
| <input type="checkbox"/> SUPERIOR PERFORMANCE                  |                                  |                                                      |

## ACTION TAKEN:

- |                                                  |                                                              |
|--------------------------------------------------|--------------------------------------------------------------|
| <input type="checkbox"/> Verbal Warning          | <input checked="" type="checkbox"/> Written Warning - Second |
| <input type="checkbox"/> Written Warning - First | <input type="checkbox"/> Suspension for ____ Days            |
| <input type="checkbox"/> Positive Reinforcement  | <input type="checkbox"/> Other (Specify) _____               |

## CONSEQUENCE OF REPEAT VIOLATION:

- |                                                   |                                                                  |
|---------------------------------------------------|------------------------------------------------------------------|
| <input type="checkbox"/> Written Warning - First  | <input checked="" type="checkbox"/> Suspension for <u>5</u> Days |
| <input type="checkbox"/> Written Warning - Second | <input type="checkbox"/> Termination                             |
| <input type="checkbox"/> Other (Specify) _____    |                                                                  |

## SUPERVISOR COMMENTS:

Hourly Employees not being clocked in and paid correctly. Reader Board Message not changed as directed, Info not ready at Monday A.M.

## EMPLOYEE COMMENTS:

Bojangles 000040  
Rodgers v. CB

HAS THE EMPLOYEE BEEN INFORMED OF THE CONSEQUENCES OF REPEATED VIOLATIONS? ☐ YES ☐ NO

|                                       |                       |                                        |                       |
|---------------------------------------|-----------------------|----------------------------------------|-----------------------|
| Supervisors Signature: <u>M. Slub</u> | Date: <u>12/26/06</u> | Employee Signature: <u>[Signature]</u> | Date: <u>12/26/06</u> |
| Initiated By: <u>[Signature]</u>      | Date: <u>12/26/06</u> | Witness Signature: <u>[Signature]</u>  | Date: <u>12/26/06</u> |



# BOJANGLES'

## WORK INCIDENT REPORT

Employee's Name Rodgers Rodriguez Date 7/17/10  
Last First Middle  
 Position U.D. Department / Location 489  
 Date of Violation \_\_\_\_\_  
 Has employee previously received a written warning? ( ) Yes ( ☒ ) No

## Description of Incident ( Check One )

- ( ) Absent ( ) Excused ( ) Unexcused  
 ( ) Tardy  
 ( ) Violation of Company Policy  
 ( ☒ ) Notice of Unsatisfactory Performance  
 ( ) Misconduct

## Disciplinary Action Taken

- ( ) Verbal Warning ( ) Written Warning - Second  
 ( ☒ ) Written Warning - First ( ) Suspension for \_\_\_\_\_ Days  
 ( ) Other ( Specify ) \_\_\_\_\_

## Consequence of Repeat Violations

- ( ) Written Warning - First ( ) Suspension for \_\_\_\_\_ Days  
 ( ☒ ) Written Warning - Second ( ) Termination  
 ( ) Other ( Specify ) \_\_\_\_\_

## Supervisor Comments

Failure to Report  
Labor Hrs. used currently on  
Monday A.M.

## Employee Comments

HAS THE EMPLOYEE BEEN INFORMED OF THE CONSEQUENCES OF REPEAT VIOLATIONS ?  
 ( ☒ ) Yes ( ) No

Supervisor's Signature

Date

Employee Signature

Date

Initiated By

Date

Witness Signature

Date

\* Signing this form does not indicate agreement , but only signifies you have been informed of the above action .

# BOJANGLES'

## WORK INCIDENT REPORT

Employee's Name Rodgers Dwight Date 12/26/01  
 Last First Middle  
 Position V.D. Department / Location 485  
 Date of Violation 12/26/01  
 Has employee previously received a written warning? ☒ Yes ☐ No

## Description of Incident ( Check One )

- ☐ Absent      ☐ Excused      ☐ Unexcused  
☐ Tardy  
☐ Violation of Company Policy  
☒ Notice of Unsatisfactory Performance  
☐ Misconduct

## Disciplinary Action Taken

- ☐ Verbal Warning      ☒ Written Warning - Second  
☐ Written Warning - First      ☐ Suspension for \_\_\_\_\_ Days  
☐ Other ( Specify ) \_\_\_\_\_

## Consequence of Repeat Violations

- ☐ Written Warning - First      ☒ Suspension for \_\_\_\_\_ Days  
☐ Written Warning - Second      ☐ Termination  
☐ Other ( Specify ) \_\_\_\_\_

## Supervisor Comments

Employee new (thin) Packet  
not completed during 3 days of deposit  
steps.

## Employee Comments

HAS THE EMPLOYEE BEEN INFORMED OF THE CONSEQUENCES OF REPEAT VIOLATIONS ?  
☒ Yes ☐ No

M. Shuler  
 Supervisor's Signature

Date

Employee Signature

Date

Initiated By

Date

Witness Signature

Date

\* Signing this form does not indicate agreement , but only signifies you have been informed of the above action .

BOJANGLES'

WORK INCIDENT REPORT

Employee's Name Rodgers Dwight Date 10/9/00  
 Position UP Department / Location 489  
 Date of Violation \_\_\_\_\_  
 Did you see the violation? ☒ Yes ☐ No

Describe the incident: \_\_\_\_\_  
 1. Allowed \_\_\_\_\_  
 2. Discouraged \_\_\_\_\_  
 3. Misconduct \_\_\_\_\_

Disciplinary Action Taken: \_\_\_\_\_  
 1. Verbal Warning \_\_\_\_\_  
 2. Written Warning \_\_\_\_\_  
 3. Suspension \_\_\_\_\_  
 4. Termination \_\_\_\_\_

Remarks: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*Banking procedures not being followed per company policy.*

*Mr. Schuler* 10/9/00  
*Sandra Wells*

*[Signature]* 10/9/00

\* Signing \_\_\_\_\_

**DFT CRACKER BARREL'S  
EX. F  
TO EVIDENTIARY SUBMISSION**

AFFIDAVIT

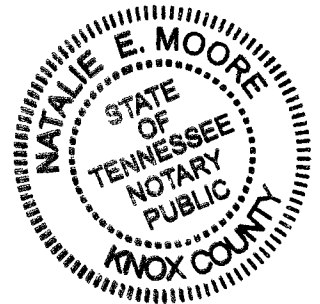
I, Melanie Wallace, of Ruby Tuesday, Inc., the undersigned, being duly sworn,  
according to law, hereby certify that the records attached hereto are true and correct  
copies of the records in my custody, pertaining to Dwight Rodgers.

Melanie Wallace  
CUSTODIAN OF RECORDS

SWORN TO AND SUBSCRIBED BEFORE ME this 14<sup>th</sup> day of May, 2007.

Natalie Moore  
NOTARY PUBLIC

My Commission Expires: 10-2-07





DWIGHT N. RODGERS SR.  
 919 EASTERN OATS DRIVE  
 MONTGOMERY, ALABAMA 36117  
 E: [dnrode@yahoo.com](mailto:dnrode@yahoo.com)  
 P: 334-277-7126 C: 678-595-5174 \*

*Monster*

**Objective:**

To obtain a position in Management Leadership with your company that would give me the opportunity of advancement. I am a results-oriented leader offering a strong and experience base. Record of success in management leadership, and controlling multi units. Excellent organizational and communication's skills. Committed to providing the highest levels of team leadership and growth through coaching, teaching and developing subordinates.

**Work Experience:**

| Dates          | Company                                               | Employed Job Title |
|----------------|-------------------------------------------------------|--------------------|
| 7/2001-Present | Cracker Barrel Restaurant Inc.<br>Montgomery, Alabama | General Manager    |

- Lead a 4.1 million dollar restaurant and 1.1 million dollar retail unit.
- Lead a staff of 5 associate managers, 1 retail manager and 142 hourly personnel
- Managed 4 successful new unit openings.
- Analyze and interpret data. Identify critical elements and apply solutions.
- Develop, implement and manage routines and systems for subordinate managers.
- Monitor management performances against goals and predetermine measures for success.
- Review sales compared to budget, food, supplies and labor cost, and all other controllable cost.
- Manage and reconcile the unit's Profit and Loss Statement.
- Direct hiring, training, motivating, evaluating and termination of personnel.
- Develop local store marketing strategy and implement advertisement, which promote company image.
- Lead and delegate the daily operations of the unit.
- Perform as Multi Unit General Manager in the absence of the District Manager

|               |                                                 |                   |
|---------------|-------------------------------------------------|-------------------|
| 8/2000-7/2001 | Multi Units General Manager<br>Atlanta, Georgia | RTM Southeast Inc |
|---------------|-------------------------------------------------|-------------------|

- Manage 2 assistant managers and 20 team members per unit.
- Manage food cost and inventory accountability
- Interview, select and develop restaurant personnel
- Maintain In-Unit P&L, General Ledger reconciliation and budgeted sales.
- Designed and implemented the local store marketing program.
- Completed performance reviews on subordinate managers and team members.

Ruby Tuesday 000034  
 Rodgers v. CB

**DWIGHT N. RODGERS SR.**

**6/1997-8/2000**

**Multi Units Training Director  
Martinez, Georgia**

**Bojangles Restaurant Inc**

- Implemented company training program with new management candidates and restaurant staff for 9 units.
- Responsible for earning and maintaining phase I and II training certification of all personnel.
- Train area management staff in restaurant operating procedures and certification.
- Interview, select and develop management trainee candidates.
- Monitored P&L's and implemented yearly budget for 9 units.
- Implement and managed the local store marketing program.

**2/1996-6/1997**

**District Manager  
Athens, Georgia**

**Athens Daily News**

- Lead a team of 7 Managers and 21 circulation personnel in the daily operations of the circulation department.
- Interviewed, trained and developed route managers in their areas of responsibilities in customer data organization
- Developed and implemented current system of route analysis and alignment.
- Reconciled journals to ensure all personnel were receiving correct payroll wages and commissions.

**8/1991-10/1996**

**Area Director  
Clear Water/ Florida**

**PLA Merchandising Company Inc**

- Lead a team of 8 managers and 240+ merchandisers in the implementing of company plan-o-grams throughout the United States "CVS/ECKERD" Program.
- Developed the training program for new hires without plan-o-gram experience to ensure a timely completion of contracts.
- Completed Quality Assurance Inspections on completed contracts.
- Completed performance reviews on management staff.
- Managed the administrative office hiring of temporary staffing personnel to assist in contract completion.
- Negotiated contract compensation for assignment completions on a per market basis.

**Education:**

**Commonwealth College**

**Bachelor's Degree Program  
Completed 2 years joined military**

**Norfolk, Virginia**

**University of Maryland**

**Bachelor's Degree Program  
Completed 1 year while overseas (Military)**

**College Park, Maryland**

**Cochise College**

**Bachelor's Degree Program  
Completed 1 year relocated (Military)**

**Sierra Vista, Arizona**

**Sanitation Certification:** Am Serv Safe certified and Serv Safe Instructor Qualified. I am also a Certified First Aid/CPR Instructor

*Tom Speziale  
706.224.3504  
GM - Cracker Barrel*

*George Katsudof  
404.583.1987  
District Manager at Cracker Barrel*

*Shauna Pray  
Jim RHM 678-656-8697*

# Ruby Tuesday, Inc.

## APPLICATION FOR SALARIED POSITIONS

Print or Type Answers to All Questions

Date of Application 10/6/05

|                                                                                       |                      |                  |
|---------------------------------------------------------------------------------------|----------------------|------------------|
| NAME <u>Dwight N. Rodgers Sr.</u>                                                     |                      |                  |
| STREET ADDRESS <u>919 Eastern Oaks Dr.</u>                                            |                      |                  |
| CITY <u>Montgomery</u>                                                                | STATE <u>Alabama</u> | ZIP <u>36117</u> |
| PREVIOUS ADDRESS (if at present address less than one year)<br><u>102 Hugh Circle</u> |                      |                  |
| CITY <u>Birmingham</u>                                                                | STATE <u>AL</u>      | ZIP <u>35209</u> |

|                                                                                         |      |
|-----------------------------------------------------------------------------------------|------|
| POSITION DESIRED <u>Manager/Multi Unit</u>                                              |      |
| SALARY DESIRED <u>53K +</u>                                                             |      |
| PHONE - HOME <u>334-377-7126</u>                                                        | WORK |
| Are there any days of the week or holidays that you will not be able to work? <u>NO</u> |      |

If you have applied for and/or worked for Ruby Tuesday, Inc. before, state where, final position, and reason left:

If necessary, would you be willing to relocate? ☒ Yes ☐ No Willing to travel? ☒ Yes ☐ No

**WORK EXPERIENCE:** List your previous experience beginning with your most recent position.  
**CIRCLE THE NAME OF ANY EMPLOYER THAT YOU DO NOT WANT CONTACTED AT THIS TIME**

|                                                                 |                                      |                                            |
|-----------------------------------------------------------------|--------------------------------------|--------------------------------------------|
| EMPLOYER <u>Cracker Barrel Restaurant Inc</u>                   |                                      |                                            |
| ADDRESS <u>911 Boyd Cooper Pkwy, Montgomery, AL</u>             |                                      | PHONE NUMBER REQUIRED <u>334-244-1035</u>  |
| STARTING POSITION <u>General Manager</u>                        | SALARY - LAST POSITION <u>66,300</u> | SALARY                                     |
| DATES EMPLOYED FROM (month/year) <u>7/22/02</u>                 | TO <u>9/3/05</u>                     | IMMEDIATE SUPERVISOR <u>Rich Alexander</u> |
| DUTIES <u>Lead in daily operations &amp; growth of business</u> |                                      |                                            |
| REASON FOR LEAVING <u>Quality of life</u>                       |                                      |                                            |

|                                                      |                                      |                                         |
|------------------------------------------------------|--------------------------------------|-----------------------------------------|
| EMPLOYER <u>Kim</u>                                  |                                      |                                         |
| ADDRESS <u>Atlanta, Georgia</u>                      |                                      | PHONE NUMBER REQUIRED                   |
| STARTING POSITION <u>General Manager/Multi Unit</u>  | SALARY - LAST POSITION <u>53,800</u> | SALARY                                  |
| DATES EMPLOYED FROM (month/year) <u>7/02</u>         | TO <u>7/02</u>                       | IMMEDIATE SUPERVISOR <u>Jim Lundell</u> |
| DUTIES <u>Lead operations of 2nd &amp; 3rd shift</u> |                                      |                                         |
| REASON FOR LEAVING <u>Company stability</u>          |                                      |                                         |

|                                                                      |                                        |                                         |
|----------------------------------------------------------------------|----------------------------------------|-----------------------------------------|
| EMPLOYER <u>Dionisio</u>                                             |                                        |                                         |
| ADDRESS <u>Martinez, Georgia</u>                                     |                                        | PHONE NUMBER REQUIRED                   |
| STARTING POSITION <u>Training Director/Multi Unit</u>                | SALARY - LAST POSITION <u>50,400 -</u> | SALARY                                  |
| DATES EMPLOYED FROM (month/year)                                     | TO                                     | IMMEDIATE SUPERVISOR <u>Linda Wells</u> |
| DUTIES <u>Develop &amp; train all management staff of franchisee</u> |                                        |                                         |
| REASON FOR LEAVING <u>Contract</u>                                   |                                        |                                         |

Your application will be considered active for six months. After that time, if you continue to have interest in employment, please submit another application.

**RUBY TUESDAY, INC. IS AN EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER**

Ruby Tuesday 000050  
Rodgers v. CB

**EDUCATION:**

| Type of School                 | Name of School             | Address of School | Field of Study      | Level Completed | Graduated                                                              |
|--------------------------------|----------------------------|-------------------|---------------------|-----------------|------------------------------------------------------------------------|
| High School                    | Booker T. Washington       | Norfolk, VA.      | General             | Grad            | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |
| College                        | University of College Park | College Park, MD  | Business Management | Bys             | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No |
| Business, Trade Correspondence |                            |                   |                     |                 | <input type="checkbox"/> Yes<br><input checked="" type="checkbox"/> No |

Who referred you to the Company? If a specific Employment Agency, Employee, or Organization, please give full name.

Grisko Hospitality

List names and positions of any relatives employed with the Company

None

What are your Career Objectives?

Director of Operations

List Computer Software and/or Programming Languages in which you have experience: Cobol, Excel, Word, etc.

☒ Yes ☐ No ARE YOU LEGALLY ELIGIBLE FOR EMPLOYMENT IN THE U.S.?

☐ Yes ☒ No Have you ever been convicted of a felony or any crime involving prostitution; procuring any person; soliciting of a child under 18 for immoral acts involving sex; possession or sales of narcotics, marijuana, or other drugs; rape; incest, gambling; illegal cohabitation; adultery; bigamy; or a crime against nature?

If yes, state details and dates:

**CONVICTION WILL NOT NECESSARILY DISQUALIFY AN APPLICANT FOR EMPLOYMENT.**

DRIVER'S LICENSE # OR STATE ID: GA D5322807

In case of emergency, please contact: Sharon R. McClain Phone: 757 627 4434

**OTHER PROFESSIONAL REFERENCES:** Please list 3 professional references.

| NAME         | POSITION & COMPANY        | ADDRESS       | PHONE NUMBER |
|--------------|---------------------------|---------------|--------------|
| Tom Speziale | General Mgr. Crocker-Kerr | LaGrange, Ga  | 706 308 0324 |
| Shawna Ray   | General Mgr. R.M.         | McDonough, Ga | 678-379-2340 |
| Jim Runkle   | Director of Ops R.M.      | Atlanta, Ga   | 678 541-2303 |

**AGREEMENT: PLEASE READ THE FOLLOWING AND SIGN YOUR NAME BELOW.**

In compliance with Federal and State Equal Employment Opportunity Laws, qualified applicants are considered for all positions applied for without regard to race, color, religion, sex, national origin, age, veteran's status, disability, or any other legally protected status.

In the event of my employment, I understand that false or misleading information given in my application or interview(s) may result in discharge and that my first three months of employment will be probationary. In consideration of my employment, I agree to conform to the rules and regulations of the Company. I acknowledge and understand that (1) no policy, rule, regulation, guideline, manual, position guide, newsletter, poster, procedure or similar writing constitutes a guaranty of employment or a contract of employment with the Company, (2) my employment and compensation can be terminated at any time, for any reason or for no reason, by the Company or me, and (3) no manager or official of the Company (other than the CEO or President in writing) has the authority to enter into any contract or agreement with me for employment for any specified period of time, or to make any contract or agreement contrary to the foregoing.

I understand that unless otherwise prohibited by applicable law, I may be required at any time to submit to a physical, urinalysis, or other examination as a condition of my employment with the Company, including a pre-employment urinalysis drug test. By accepting employment, I agree to submit to such examinations or tests as required by the Company, all at Company expense.

I authorize you to make such investigations and inquiries of my personal, employment or financial history and other related matters as may be necessary in arriving at an employment decision. I hereby release employers, schools or persons from all liability in responding to inquiries in connection with my application.

**INCOMPLETE APPLICATIONS WILL NOT BE CONSIDERED**

If your application is considered favorably, on what date will you be available for work? 10/6/05  
I certify that answers given herein are true and complete to the best of my knowledge.

**READ CAREFULLY BEFORE SIGNING**

I agree that any claim or lawsuit relating to my service with Ruby Tuesday must be filed no more than six (6) months after the date of the employment action that is the subject of the claim or lawsuit. I waive any statute of limitations to the contrary.

Signature of Applicant

Date 10/6/05

**DFT CRACKER BARREL'S  
EX. G  
TO EVIDENTIARY SUBMISSION**

**AFFIDAVIT OF TOMMIE PATTERSON**

STATE OF ALABAMA                     )  
                                                      )  
COUNTY OF JEFFERSON                )

The undersigned, Tommie Patterson, deposes and states as follows:

1. My name is Tommie Patterson. I am over the age of nineteen and I have personal knowledge of the facts set forth in this affidavit. I give this affidavit voluntarily and without coercion.

2. I am currently employed by Cracker Barrel Old Country Store, Inc. ("Cracker Barrel") as a Senior Associate Manager in the Columbus, Georgia store. I have been employed by Cracker Barrel since January, 2000.

3. I worked in Cracker Barrel's Gardendale, Alabama store from January, 2000 until October, 2005. My first position there was Manager in Training, then Associate Manager and then Senior Associate Manager.

4. I am aware of and understand Cracker Barrel's Equal Opportunity, Harassment and Discrimination policies. As a manager, I have been well trained in these policies. I have attended classes on these policies and in diversity. Cracker Barrel frequently distributes materials reminding us of its policies and emphasizing that it does not tolerate any harassment or discrimination. I am also aware that



Cracker Barrel provides a hotline that employees can use to make complaints to the home office.

5. I also understand that Cracker Barrel takes complaints of discrimination and harassment very seriously. I understand that anyone who engages in discrimination or harassment will be disciplined, which may include immediate termination. My experience with Cracker Barrel's Home Office is that it is responsive to all employee complaints, including those involving discrimination and harassment, and that it requires that all employee complaints be investigated and resolved as is appropriate in each circumstance.

6. Rich Alexander was my District Manager during my employment in the Gardendale store. My experience with Mr. Alexander was that he took employee complaints very seriously and would not tolerate any harassment and discrimination. Based on my observation and experience, Mr. Alexander responded to all employee complaints of which he was aware and would not hesitate to discipline employees if warranted.

7. I was the Senior Associate Manager at the Gardendale, Alabama store when Dwight Rodgers became the General Manager of that store in approximately September, 2004. I did not interview for the General Manager position at that time and had no expectation of obtaining that position.

8. The other managers during Mr. Rodgers' tenure as General Manager in Gardendale were Lisa Clayborne, Carolyn Freeman and Brian Harbin. Mr. Rodgers told me that he could have replaced us with other managers if he wanted to do that, but that he had a good management team, and he chose to keep us.

9. When Mr. Rodgers became the General Manager and throughout his employment there, I fully supported him in his role. As Senior Associate Manager, it was my job to implement the General Manager's decisions, and I always tried to do that. However, I sometimes found it difficult to implement Mr. Rodgers' decisions because he was not a very good leader. He did not seem to have a clear direction for the store, and I was often unsure how Mr. Rodgers wanted me to proceed on matters. This was an unusual situation for me. Under previous General Managers, I felt that the Gardendale store had a clear direction and plan.

10. When Mr. Rodgers first became General Manager at the Gardendale store, he spent a lot of time in the office rather than in the restaurant or kitchen with the employees. At first, this did not seem unusual to me because I expected that it would take some time for him to learn the store, get organized and develop his plans for the store. However, after a couple of months, Mr. Rodgers had still not communicated any direction or plans to me or to my knowledge to the rest of the management team, and he continued to spend a lot of time in the office.

11. Mr. Rodgers also spent a lot of time away from the store, when it was not his off day. Again, at first I thought he probably had things to do to get settled in a new town so his absences did not bother me, but even after a few weeks, his attendance did not improve, and in fact, it became worse. Mr. Rodgers often arrived at work late and left early. Sometimes he left the store and said he would come back, but he did not return that day. He also called off from his scheduled shift several times at the last minute. Because of his frequent absences from the store, I often had to work extra. For example, if he called off, I had to cover his shift, often with very little notice. If he was late or left early, I sometimes had to work over into the next shift. Mr. Rodgers' poor attendance became increasingly frustrating to me. Although the other managers sometimes covered the time he missed, I usually bore the brunt of his absence.

12. Another concern that I had about Mr. Rodgers was that he did not communicate well with his management team. For example, he would tell employees certain things or allow changes in procedures without telling me or the others on the management team. When an employee would bring the matter to my attention or to another manager's attention who would ask me, we would not know what the employee was talking about. This failure to communicate made it difficult to address employee misconduct and to enforce Cracker Barrel procedure.

13. Mr. Rodgers was also not very good at following through with plans or paperwork. He also was not very good at holding employees accountable for their actions and enforcing consequences if they did not follow the rules.

14. Under Mr. Rodgers, the management team became very divisive and dysfunctional. We were not working well together as a team. There was no animosity towards Mr. Rodgers. In fact, I enjoyed being around him when he was there, and thought he was a fun person, but without leadership or a clear direction there was a lot of tension within the team.

15. I tried to talk to Mr. Rodgers about my concerns, including the lack of direction, his poor attendance and his failure to communicate, but he always acted like he did not care about my concerns and told me it was his decision how to run the store.

16. When asked, I also shared my concerns with Rich Alexander. My purpose in talking with Mr. Alexander was not to get Mr. Rodgers in trouble. I shared my concerns with Mr. Alexander because I hoped he could help Mr. Rodgers give us leadership and direction and thus help us be a better team. Mr. Alexander met with the management team and Mr. Rodgers in the Spring of 2005, talked with us about our issues and made suggestions to help us work together better. My observation was that Mr. Alexander wanted all of us, including Mr.

Rodgers, to succeed in our individual jobs and as a team. Despite Mr. Alexander's assistance, I never saw any significant changes in Mr. Rodgers as the leader of our store.

17. In approximately March, 2005, Mr. Rodgers called me at the Gardendale store (I believe on a Monday) and told me that he had a death in the family and to cover his shifts. I was upset by this phone call for a couple of reasons. One, since I had received such short notice that Mr. Rodgers would not be in that day, I would have to work a double shift unexpectedly. I would also have to work more that week. Two, this was not the first time that Mr. Rodgers had called off unexpectedly, and I was frustrated about his poor attendance in general and the fact that I was working twice as much as him.

18. An employee named Penny Schmid was standing near me during this phone call and when I got off the call she asked me what was the matter and I told her that Mr. Rodgers had a death in the family. She asked when he would be returning to work, and I said "I do not know. He was scheduled to work Thursday but I don't know if he will be back on Thursday. Don't they normally have their funerals on the weekend." By "they" I meant African-Americans. I did not mean for this comment to be derogatory in any way. I made this comment because many of the African-Americans that I have known had funerals on the weekends. I now

realize that this comment, even if true, was insensitive, and I should not have said it. At the time, I was so frustrated with Mr. Rodgers' absence that I did not consider the insensitivity of the comment.

19. Ms. Schmid did not respond when I made this comment. A few days later, Rich Alexander informed me that Ms. Schmid was offended by a comment by me. Mr. Alexander asked me if I made the above-referenced comment about African-Americans having funerals on the weekends, and I admitted that I did. I told Mr. Alexander that I did not mean it to be derogatory or offensive and that my experience with African-American friends led me to believe it was a true statement. Mr. Alexander told me that it was an insensitive comment and that I should not have said it. He told me to apologize to Ms. Schmid. He warned me that any similar comments in the future would cost me, which I understood to mean I could lose my job. In his conversation with me, Mr. Alexander appeared to take the matter seriously and to mean what he said.

20. Soon after I met with Mr. Alexander, I gave him a signed statement which summarized the above-referenced incident. The document attached hereto is a true and correct copy of the statement which I prepared and gave Mr. Alexander, except the copy that I gave Mr. Alexander was signed and dated by me. To date, I have not been able to locate a signed and dated copy of the statement.



21. After meeting with Mr. Alexander, and within a week, I apologized to Penny Schmid for the comment. I told Ms. Schmid that I was sorry I made the comment and that I did not mean for it to be offensive.

22. I also told Mr. Rodgers about the comment I had made, and I explained why I made the comment and that I did not mean it to be derogatory. I do not recall Mr. Rodgers saying anything in response.

23. Mr. Rodgers transferred to the Montgomery, Alabama store in approximately June, 2005. He told me that he requested that transfer.

24. I did not hear anything more about this comment after these conversations with Mr. Rodgers and Ms. Schmid. Mr. Rodgers never mentioned it again. I thought the matter was resolved until I learned that Mr. Rodgers mentioned it in a charge of discrimination with the EEOC.

25. I never intended to offend Mr. Rodgers or Ms. Schmid, and I am sorry if I did so. I do not discriminate on the basis of race. The fact that Mr. Rodgers was African-American did not matter to me. I liked Mr. Rodgers on a personal level. My concerns about him were based solely on the lack of leadership that he showed as General Manager of the Gardendale store and had nothing to do with his race.

26. The foregoing is true and complete to the best of my knowledge and sworn to under penalty of perjury.

DATED: 8/10/06

Tommie O. Patterson  
Tommie Patterson

**VERIFICATION**

STATE OF ALABAMA                    )  
                                                  )  
COUNTY OF JEFFERSON            )

Before me, Rubli Stewart, a notary public in and for said county in said State, personally appeared, Tommie Patterson, who is known to me and who being first duly sworn, deposes and says that he has personal knowledge of the facts set forth in the foregoing affidavit and that all such matters are true and correct to the best of his knowledge.

Subscribed and sworn before me this 10<sup>th</sup> day of August, 2006.

Rubli Stewart  
NOTARY PUBLIC

My Commission Expires:

I, Tommie Patterson, took a call from the GM, D. Rodgers, at the front register (I believe it was on a Monday). D. Rodgers, was calling to request that I cover his shift for him due to a death in his family. Penny Schmid, Server/Shift Leader, was also at the register. When I ended the call, she noticed the concerned look on my face and asked me what was the matter. I told her D. Rodgers had a death in the family. She asked when he would be returning to work. I said, "I do not know. He was scheduled to work Thursday but I don't know if he will be back on Thursday. Don't they normally have their funerals on the weekend." Working with other African Americans in the past, it has been my experience that many African American funerals are held on the weekend.

I am sorry that Ms. Schmid took offense to my statement. My statement intended nothing derogatory. As soon as I see Penny Schmid, I will apologize for my statement. At hindsight, I can see where my statement may have seemed insensitive.

---

Tommie Patterson, Senior Associate Manager

---

Date

Ex. 1  
to  
Patterson  
Affidavit

**DFT CRACKER BARREL'S  
EX. H  
TO EVIDENTIARY SUBMISSION**



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Birmingham District Office**

Ridge Park Place, South  
1130 - 22<sup>nd</sup> Street, South, Suite 2000  
Birmingham, AL 35205  
(205) 212-2069  
TTY (205) 212-2112  
FAX (205) 212-2105

July 03, 2007

Ms. Michelle Montgomery, ParaLegal,  
BURR & FORMAN, LLP,  
Attorneys and Counselors,  
3100 Wachovia Tower,  
420 North Twentieth Street,  
Birmingham, AL 35203-5206,

|                    |                                                                                    |
|--------------------|------------------------------------------------------------------------------------|
| Regarding Charge:  | <u>Dwight N. Rodgers, Sr. vs. Cracker Barrel Old</u><br><u>Country Store, Inc.</u> |
| EEOC Charge Number | 130-2005-06620                                                                     |
| FOIA Number        | A7-08-FOIA-205-BI                                                                  |

Dear Ms. Montgomery:

We are in receipt of your Freedom of Information Act (FOIA) request addressed to the Regional Attorney, Birmingham District Office dated May 10, 2007 regarding the Charge Number shown above. Your request was received by the Regional Attorney on June 27, 2007. Pursuant to law, we are required to provide an initial response to your request within twenty (20) business days of receiving your request. This letter is that initial response.

Your request has now been processed. Your request for a copy of this file is Granted in Part and Denied in Part. The charge in question was filed under Title VII of the Civil Rights Act of 1964. Those portions of the file not released are being withheld pursuant to disclosure exceptions described in that Act and in the Freedom of Information Act (FOIA), 5 U.S.C. §552, as amended. The first attachment to this letter (Attachment A) lists the subsections of the FOIA which apply to the documents withheld. The second attachment to this letter (Attachment B) explains the use of these FOIA exemptions in more detail.

The remaining documents, which will be produced, total 0341 pages (copies enclosed). You now have the option of (1) inspecting the documents to be disclosed or (2) obtaining copies of the disclosed documents. If you elect to receive copies of the disclosed documents, we will promptly forward the documents to Pete's Print and Copy Service, Inc. a local provider of copy services. Under the terms of a contract entered into between the EEOC Birmingham District Office and Pete's Print and Copy Service, Inc. a copy of all disclosed documents could be promptly provided for a fee of \$34.10. The contracted fee for photocopying is within the fee schedule set forth in 29 C.F.R. §1610.15(a)(3). If you choose to obtain copies, a check in the aforementioned total amount should be made payable to Pete's Print and Copy Service, Inc.

Page 2 of 4

Response to FOIA Request

FOIA Number A7-08-FOIA-205-BI

Upon receipt of the above amount, the documents will be delivered for copying and will then be forwarded to you.<sup>1</sup>

You may appeal the denial or partial denial of your request by writing within thirty days of receipt of this letter to Assistant Legal Counsel/FOIA Programs, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission, 1801 L Street, N.W., Washington, D.C. 20507. You must include a copy of the Regional Attorney's determination with your appeal. Your appeal will be governed by 29 C.F.R. §1610.11.

Very truly yours,



C. Emanuel Smith  
Regional Attorney

Enclosures

CES/bls

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<sup>1</sup> Under Commission regulations, 29 C.F.R. §1610.15, there will be no charge for copying the first 100 pages.



Witness Statement  
April 27, 2006

S. Curry, Investigator 

Charge No. 130-2005-2006

Dwight Rodgers vs. Cracker Barrel Restaurant

**Witness: Penny Schmidt, Education & Training Coordinator (Schmidt was a shift leader and has recently been promoted to ET Coordinator).**

Schmidt was asked if she heard Tommy Patterson make any racist comments about Dwight Rodgers (hereinafter, Charging Party).

Schmidt stated that Tommy Patterson was on the telephone with the Charging Party and when he got off the telephone he stated that the Charging Party had a death in his family. Schmidt stated that Patterson told her that he thought "blacks buried their people on the weekend."

Schmidt stated that she later told the Charging Party about Patterson's comments.

Schmidt was asked if she ever told Rich Alexander (District Manager) about Patterson's comments.

Schmidt stated no, Rich Alexander came to her around the end of May or first part of June (2005) and asked her how she felt about it.

Schmidt stated that she told Rich Alexander that the comments offended her because her grandchildren are Black.

Schmidt stated that Rich Alexander told her that he didn't think that Tommy Patterson was being discriminatory. Schmidt also stated that she wrote a statement and gave it to Rich Alexander telling him that she thought that the comments were offensive.

Schmidt stated that the Charging Party "didn't stand a chance" at the Gardendale store because Tommy Patterson wanted to be the general manager.

Schmidt was asked if there were a lot of customer complaints at the Gardendale store (CP was the general manager at the time that Schmidt worked at the Gardendale store).

Schmidt stated there were a few complaints, especially from Bill (White, male), who worked for Alabama Power. Schmidt stated that the Charging Party wouldn't allow Bill to come into the kitchen when he wasn't on official Alabama Power business. Schmidt also stated that Gardendale (the customers) didn't want a Black man to be the manager.

Schmidt stated that the managers constantly talked about not wanting to work with the Charging Party. Schmidt also stated that the Charging Party was a good manager.